LIBRARY OF CONGRESS
00005394855

ANDREW JOHNSON

Statesman Edition — Vol. XIV

Charles Sumner

HIS COMPLETE WORKS

With Introduction

BY

HON. GEORGE FRISBIE HOAR

BOSTON
LEE AND SHEPARD
MCM

6556

Two Copies Received
JUN 15 1900
Copyright entry
May 21, 1900
No. A. 12726.
FIRST COPY.
2nd Copy Delivered to
ORDER DIVISION
JUN 16 1900

SECOND COPY.

Copyright, 1874 and 1875,

by

FRANCIS V. BALCH, Executor.

Copyright, 1900,

by

LEE AND SHEPARD.

63373

Statesman Edition.

Limited to One Thousand Copies.
Of which this is

No. Extra.

Norwood Press:
Norwood, Mass., U.S.A.

CONTENTS OF VOLUME XIV.

PAGE

MAJORITY OR PLURALITY IN THE ELECTION OF SENATORS. Speech in the Senate, on the Contested Election of Hon. John P. Stockton, of New Jersey, March 23, 1866 . . 1

A SENATOR CANNOT VOTE FOR HIMSELF. Speech in the Senate, on the Vote of Hon. John P. Stockton affirming his Seat in the Senate, March 26, 1866 15

REMODELLING OF THE SUPREME COURT OF THE UNITED STATES. Remarks in the Senate, on the Bill to reorganize the Judiciary of the United States, April 2, 1866 . . 30

THE LATE SOLOMON FOOT, SENATOR FROM VERMONT. Speech in the Senate, on his Death, April 12, 1866 . . . 33

COMPLETE EQUALITY IN RIGHTS, AND NOT SEMI-EQUALITY. Letter to a Committee on the Celebration of Emancipation in the District of Columbia, April 14, 1866 . . 41

JUSTICE TO MECHANICS IN THE WAR. Speech in the Senate, on a Bill for the Relief of certain Contractors, April 17, 1866 43

POWER OF CONGRESS TO COUNTERACT THE CATTLE-PLAGUE. Remarks in the Senate, on a Resolution to print a Letter of the Commissioner of Agriculture on the Cattle-Plague, April 25, 1866 49

URGENT DUTY OF THE HOUR. Letter to the American Anti-slavery Society, May 1, 1866 51

TIME AND RECONSTRUCTION. Remarks in the Senate, on a Resolution to hasten Reconstruction, May 2, 1866 . . 52

PAGE

The Emperor of Russia and Emancipation. Remarks on a Joint Resolution relative to Attempted Assassination of the Emperor, May 8, 1866 56

Power of Congress to provide against Cholera from Abroad. Speeches in the Senate, on a Joint Resolution to prevent the Introduction of Cholera into the Ports of the United States, May 9, 11, and 15, 1866 . . . 59

Rank of Diplomatic Representatives Abroad. Speeches in the Senate, on an Amendment to the Consular and Diplomatic Bill, authorizing Envoys Extraordinary and Ministers Plenipotentiary instead of Ministers Resident, May 16 and 17, 1866 74

Office of Assistant Secretary of State, and Mr. Hunter. Remarks in the Senate, on an Amendment to the Consular and Diplomatic Bill, creating the Office of Second Assistant Secretary of State, May 16 and 17, 1866 82

Delay in the Removal of Disabilities. Letter to an Applicant, May, 1866 85

Interruption of Right of Petition. Remarks in the Senate, on the Withdrawal of a Petition from Citizens of Virginia, May 24, 1866 86

Official History of the Rebellion. Remarks in the Senate, on a Joint Resolution to provide for the Publication of the Official History of the Rebellion, May 24, 1866 88

Equal Rights a Condition of Reconstruction. Amendment in the Senate to a Reconstruction Bill, May 29, 1866 92

Inter-State Intercourse by Railway. Remarks in the Senate, on the Bill to facilitate Commercial, Postal, and Military Communication in the several States, May 29, 1866 93

Attitude of Justice towards England. Remarks in the Senate, on the Bill for the Relief of the Owners of the British Vessel Magicienne, June 26, 1866 . . . 96

PAGE

POWER OF CONGRESS TO MAKE A SHIP CANAL AT NIAGARA. Remarks in the Senate, on a Bill to incorporate the Niagara Ship-Canal, June 28, 1866 99

HONOR TO A CONSTANT UNION MAN OF SOUTH CAROLINA. Remarks in the Senate, on a Joint Resolution to authorize the Purchase for Congress of the Law Library of the Late James L. Pettigru, of South Carolina, July 3, 1866 103

OPEN VOTING IN THE ELECTION OF SENATORS; SECRET VOTING AT POPULAR ELECTIONS. Speech in the Senate, on the Bill concerning the Election of Senators, July 11, 1866 105

MAIL SERVICE BETWEEN THE UNITED STATES AND THE SANDWICH ISLANDS. Speech in the Senate, on a Joint Resolution releasing the Pacific Mail Steamships from stopping at the Sandwich Islands on their Route to Japan and China, July 17, 1866 110

TENNESSEE NOT SUFFICIENTLY RECONSTRUCTED. Speech in the Senate, on a Joint Resolution declaring Tennessee again entitled to Senators and Representatives in Congress, July 21, 1866 114

THE SENATE CHAMBER: ITS VENTILATION AND SIZE. Speech in the Senate, on an Amendment to the Civil Appropriation Bill, July 23, 1866 119

A SHIP-CANAL THROUGH THE ISTHMUS OF DARIEN. Remarks in the Senate, on an Amendment to the Civil Appropriation Bill, July 25, 1866 124

INQUIRY INTO THE TITLE OF A SENATOR TO HIS SEAT. Remarks in the Senate, on the Credentials of the Senator from Tennessee, July 26, 1866 126

NO MORE STATES WITH THE WORD "WHITE" IN THE CONSTITUTION. Speeches in the Senate, on the Admission of Nebraska as a State, July 27, December 14 and 19, 1866, and January 8, 1867 128

THE METRIC SYSTEM OF WEIGHTS AND MEASURES. Speech in the Senate, on Two Bills and a Joint Resolution relating to the Metric System, July 27, 1866 148

PAGE

ART IN THE NATIONAL CAPITOL. Speech in the Senate, on a Joint Resolution authorizing a Contract with Vinnie Ream for a Statue of Abraham Lincoln, July 27, 1866 . 164

THE ONE MAN POWER *vs.* CONGRESS. THE PRESENT SITUATION. Address at the Opening of the Annual Lectures of the Parker Fraternity, at the Music Hall, Boston, October 2, 1866 181

THE OCEAN TELEGRAPH BETWEEN EUROPE AND AMERICA. Answer to Invitation to attend a Banquet at New York, in Honor of Cyrus W. Field, November 14, 1866 . . 220

ENCOURAGEMENT TO COLORED FELLOW-CITIZENS. Letter to a Convention of Colored Citizens, December 2, 1866 . 222

THE TRUE PRINCIPLES OF RECONSTRUCTION. ILLEGALITY OF EXISTING GOVERNMENTS IN THE REBEL STATES. Resolutions and Remarks in the Senate, December 5, 1866 224

FEMALE SUFFRAGE, AND AN EDUCATIONAL TEST OF MALE SUFFRAGE. Speech in the Senate, on Amendments to the Bill conferring Suffrage without Distinction of Color in the District of Columbia, December 13, 1866 . . 228

PROHIBITION OF PEONAGE. Resolution and Remarks in the Senate, January 3, 1867 232

PRECAUTION AGAINST THE REVIVAL OF SLAVERY. Remarks in the Senate, on a Resolution and the Report of the Judiciary Committee, January 3 and February 20, 1867 . 234

PROTECTION AGAINST THE PRESIDENT. Speeches in the Senate, on an Amendment to the Tenure-of-Office Bill, January 15, 17, and 18, 1867 239

DENUNCIATION OF THE COOLIE TRADE. Resolution in the Senate, from the Committee on Foreign Relations, January 16, 1867 262

PAGE

CHEAP BOOKS AND PUBLIC LIBRARIES. Remarks in the Senate, on Amendments to the Tariff Bill reducing the Tariff on Books, January 24, 1867 263

CHEAP COAL. Speech in the Senate, on an Amendment to the Tariff Bill, January 29, 1867 271

A SINGLE TERM FOR THE PRESIDENT, AND CHOICE BY DIRECT VOTE OF THE PEOPLE. Remarks in the Senate, on an Amendment of the National Constitution, February 11, 1867 278

RECONSTRUCTION AT LAST WITH COLORED SUFFRAGE AND PROTECTION AGAINST REBEL INFLUENCE. Speeches in the Senate, on the Bill to provide for the more Efficient Government of the Rebel States, February 14, 19, and 20, 1867 282

THE DEPARTMENT OF EDUCATION. Remarks in the Senate, on the Bill to establish a Department of Education, February 26, 1867 297

MONUMENTS TO DECEASED SENATORS. Remarks in the Senate, on a Resolution directing the Erection of such Monuments, February 27, 1867 299

A VICTORY OF PEACE. Speech in the Senate, on a Joint Resolution giving the Thanks of Congress to Cyrus W. Field, March 2, 1867 301

FURTHER GUARANTIES IN RECONSTRUCTION. LOYALTY, EDUCATION, AND A HOMESTEAD FOR FREEDMEN; MEASURES OF RECONSTRUCTION NOT A BURDEN OR PENALTY. Resolutions and Speeches in the Senate, March 7 and 11, 1867 304

GENEROSITY FOR EDUCATION. Speech in the Senate, on a Joint Resolution giving the Thanks of Congress to George Peabody, March 8, 1867 317

RECONSTRUCTION AGAIN. THE BALLOT AND PUBLIC SCHOOLS OPEN TO ALL. Speeches in the Senate, on the Supplementary Reconstruction Bill, March 15 and 16, 1867 . 321

PAGE

PROHIBITION OF DIPLOMATIC UNIFORM. Speech in the Senate, on a Joint Resolution concerning the Uniform of Persons in the Diplomatic Service of the United States, March 20, 1867 344

VIGILANCE AGAINST THE PRESIDENT. Remarks in the Senate, on Resolutions adjourning Congress, March 23, 26, 28, and 29, 1867 348

LOYALTY AND REPUBLICAN GOVERNMENT CONDITIONS OF ASSISTANCE TO THE REBEL STATES. Remarks in the Senate, on a Joint Resolution authorizing Surveys for the Reconstruction of the Levees of the Mississippi, March 29, 1867 358

MAJORITY OR PLURALITY IN THE ELECTION OF SENATORS.

SPEECH IN THE SENATE, ON THE CONTESTED ELECTION OF HON. JOHN P. STOCKTON, OF NEW JERSEY, MARCH 23, 1866.

THE seat of Hon. John P. Stockton, as Senator from New Jersey, was contested at this session of the Senate, on the ground of irregularity in the election. The Judiciary Committee, by their Chairman, Mr. Trumbull, reported that he "was duly elected, and is entitled to his seat," and in their report stated the case: —

"The only question involved in the decision of Mr. Stockton's right to a seat is, whether an election by a plurality of votes of the members of the Legislature of New Jersey, in joint meeting assembled, in pursuance of a rule adopted by the joint meeting itself, is valid. The protestants insist that it is not; and they deny Mr. Stockton's right to a seat, because, as they say, he was not appointed by a majority of the votes of the joint meeting of the Legislature."

The debate on this question showed earnestness and feeling. Mr. Fessenden, of Maine, used strong language: "I was exceedingly surprised — more so, I will say, than I ever was before, at a judicial decision, in my life — at the opinion to which the Committee on the Judiciary arrived in relation to this matter." Mr. Trumbull defended the report. Mr. Sumner followed.

MR. PRESIDENT, — When the Senator from Illinois rose to speak, I had made up my mind to say nothing in this debate; but topics have been introduced by him which I am unwilling should pass without notice.

The Senator did not disguise that the case is with-

out a precedent in the history of the Senate. Never before has a Senator appeared in this Chamber with the credentials of a minority. And I venture to say further, that the rule of a majority has the constant consecration of history in the proceedings of parliamentary or electoral bodies. It is the rule of the House of Commons in the choice of Speaker; and this is the most important precedent for us, for our Parliamentary Law is derived from England. But it antedates the English Parliament. The oldest electoral body in the world is the Conclave of Cardinals; but who has heard that a Pope was ever elected by a minority? I ask your attention to this example, that you may see how the rule of the minority is constantly rejected, notwithstanding temptation, inducement, and pressure to adopt it. There have been many contested elections, during which the Cardinals, separated from the world, each in a small apartment or cell of the Vatican or the Palace of the Quirinal, have been imprisoned like a jury, sometimes for months, waiting for the requisite majority. They did not undertake to change the rule, and set up the will of a minority. There was Lambertini, who shone as Pope Benedict the Fourteenth, conspicuous as statesman and patron of letters, who was not chosen until after six months' ineffectual efforts. Such instances stand like so many pillars, and I refer to them now as proper to guide your conduct.

The question before us is of law, and nothing else. It is not a question of politics or of sentiment, except so far as these enter into the determination of law. It is a question for reason alone.

It lies in a nutshell. A brief text of the National

Constitution, and another brief text of a local statute, are all that need be considered.

The National Constitution provides as follows: —

"The Senate of the United States shall be composed of two Senators from each State, chosen by the *Legislature* thereof."

"The times, places, and *manner of holding elections for Senators* and Representatives shall be *prescribed* in each State by the *Legislature* thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

In carrying out this provision, the Legislature of New Jersey, by a statute passed April 10, 1846, and copied from a statute passed in 1790, enacted as follows: —

"Senators of the United States on the part of this State shall be appointed *by the Senate and General Assembly of this State in joint meeting assembled.*"

In pursuance of these two provisions of National Constitution and of local statute, the Legislature of New Jersey has undertaken to elect a Senator. From the statement of the case, it appears, that, on a certain day, the two Houses assembled "in joint meeting"; that they proceeded to act on a resolution declaring that "any candidate receiving a *plurality* of votes of the members present shall be declared duly elected"; that this resolution was adopted by forty-one votes out of eighty-one, — eleven Senators, being a majority of the Senate, and thirty members of the House, being less than a majority of that body, voting for it; that, in pursuance of this resolution, Mr. Stockton was declared Senator, although he did not receive a majority of the votes of either House or of the joint meeting. In

point of fact, he received forty votes, of which ten were from Senators and thirty from members of the Assembly, while against him were forty-one votes; and the question you are to decide is on the legality of this election.

The National Constitution is the original and highest source of light on the question. Here we find, that, in the absence of any regulations from Congress, the manner of choosing a Senator is referred to the State Legislature. The Senator is to be chosen by the *Legislature*, which is to *prescribe*, among other things, the *manner* of holding the election. Whatever the State can do must be derived from this source, nor more nor less. The choice is by the Legislature, according to a manner prescribed by the Legislature.

The National Constitution does not undertake to define a State Legislature or its forms of proceeding. This is left to the State itself. Notoriously, these Legislatures were modelled on the Colonial Legislatures preceding them, which had been modelled on the Parliament of the mother country. As a general rule, there were two Chambers, upper and lower; but this was not universal. In Georgia and Pennsylvania there was for a while only a single Chamber, constituting the Legislature. I mention this to show how completely the State itself was left to determine the conditions of its Legislature. But the State speaks through the State Constitution, which fixes these conditions. Where the Constitution is silent, can the Legislature itself venture to speak?

Repairing to the Constitution of New Jersey, we find it providing that "the *legislative power* shall be vested in a Senate and General Assembly"; that these bodies

shall meet and organize separately"; that "all bills and joint resolutions shall be read three times in each House"; and "no bill or joint resolution shall pass, unless there be a *majority* of all the members of each body personally present and agreeing thereto." Such is the definition of a Legislature, and such are the forms of legislative proceedings prescribed by the Constitution of New Jersey.

The statute of New Jersey, to which I have referred as framed in 1790, was entitled "An Act to *prescribe the manner* of appointing Senators of the United States and Electors of the President and Vice-President of the United States on the part of this State." This was in pursuance of the National Constitution. It was the execution, on the part of the State, of the power with which it was invested to prescribe the manner of electing Senators.

I have no purpose of raising any question with regard to the validity of this statute prescribing the election of Senators *in joint meeting*. Constant usage is in its favor; and yet I have no hesitation in saying that it has always seemed to me inconsistent with a just construction of the National Constitution. Senators are to be "chosen by the Legislature"; but the Legislature is composed of two separate bodies, defined by the State Constitution. Senators, therefore, should be chosen by the two bodies separately. So it has always seemed to me, and the practice of my own State is accordingly. In this opinion I am sustained by so eminent an authority as Chancellor Kent, who, after setting forth the usage, proceeds to express his dissent from it as a just construction of the National Constitution. His language is explicit: —

"I should think, if the question was a new one, that, when the Constitution directed that the Senators should be chosen by *the Legislature*, it meant, not the members of the Legislature *per capita*, but the Legislature in the true technical sense, being the two Houses acting in their separate and organized capacities, with the ordinary constitutional right of negative on each other's proceedings." [1]

It is difficult to resist this conclusion, especially when it is considered that in any other way the smaller body is actually swamped by the larger. In a joint meeting the Senate loses its relative power. I adduce this, not for criticism, but only for illustration. Even admitting that the received usage of choosing Senators in joint meeting is consistent with the National Constitution, it is clear that it should not be extended; and this is the precise question before us. Contrary to all usage or precedent, and without any direct sanction in the Constitution or statutes of New Jersey, the Legislature has undertaken in joint meeting, not only to choose a Senator, but also to prescribe the manner of choosing him. Finding that it could not choose according to existing usage, it adopted the resolution declaring that the election should be determined by a minority of votes instead of a majority.

In this resolution two questions arise: first, can the Legislature itself, by legislative act, substitute a minority for a majority in the election of Senators, and thus set aside a great and traditional principle? and, secondly, can it do this in a "joint meeting," without any previous legislative act? It is enough for the present occasion, if I show, that, whatever may be the powers of the Legislature by legislative act, it can have

[1] Commentaries on American Law (4th edit.), Vol. I. p. 226.

no such extraordinary power in the questionable assembly known as "joint meeting." But we shall better understand the second question, after considering the first.

To what extent can a Legislature substitute a minority for a majority in any of its proceedings? In most cases the question is controlled by the express language of the State Constitution; but I present the question now independently of any State Constitution.

In considering the power of the Legislature, it is important to put aside any influence that may be attributed to the unquestioned usage of choosing Representatives and other officers by plurality of votes. Because the people choose by plurality, it does not follow that a Legislature may. From time immemorial, the rule in the two cases has been different, unless we except the New England States, where, until recently, even popular elections were by a majority. But the origin of the practice in New England testifies to the rule.

It is proper for us to interrogate the country from which our institutions are derived, for the origin of the rule. Indeed, where a word is used in the Constitution having a previous signification or character in the institutions of England, we cannot err, if we consider its import there. I think we do this habitually. Mr. Wirt, in his masterly argument on the impeachment of Judge Peck, develops this idea.

"The Constitution secures the trial by jury. Where do you get the meaning of *a trial by jury?* Certainly not from the Civil or Canon Law, or the Law of Nations. It is peculiar to the Common Law; and to the Common Law, therefore, the Constitution itself refers you for a description and

explanation of this high privilege, *the trial by jury*, and *the mode of proceeding* in those trials. . . . . The very name by which it is called into being authorizes it to look at once to the English archetypes for its government."[1]

Following this statement, so clearly expressed, the words "Legislature" and "holding elections," in the National Constitution, which belonged to the political system of England, may be explained by that system, — so, at least, that in case of doubt we shall find light in this quarter.

Now, from the beginning, it appears that in England there have been two different rules with regard to elections by the legislature and elections by the people. Elections by the legislature, like legislative acts, have been by majority; elections by the people for Parliament have been by plurality. This distinction is found throughout English history.

The House of Commons chooses its Speaker by majority. It may be said, also, that it chooses the Ministers of the Crown in the same way, because the fate of a cabinet depends upon a majority. In short, whatever it does, unless it be the nomination of committees, is by majority. It is only through majority that it can act. The House of Commons itself is found in the majority of its members, — never in a minority.

On the other hand, members of Parliament are chosen by plurality. No reason is assigned for the difference; but it may be found, perhaps, in two considerations: first, the superior convenience, amounting almost to necessity, of choosing members of Parliament in this way; and, secondly, the fact that popular bodies were not em-

[1] Stansbury, Report of the Trial of Judge Peck, Appendix, p. 499.

braced by the Law of Corporations, which establishes the rule of the majority.

Here I adduce the authority of Mr. Cushing, in his Parliamentary Law, in the very passage cited by the Senator from Illinois: —

"At the time of the first settlement and colonization of the United States, the elections of members of Parliament in England were conducted upon the principle of plurality, which also prevailed in all other elections in which the electors were at liberty to select their candidates from an indefinite number of qualified persons. Such has been, and still continues to be, the Common Law of England; and such is the present practice in that country in all elections." [1]

It will be perceived that this statement is with reference to popular elections, and not elections by corporate or legislative bodies. So far as it goes, it is explicit. But pardon me, if I say that the Senator from Illinois has misunderstood it. Had he examined it carefully, he would have seen that it had no bearing on the present case. Nobody questions the plurality rule in the election of members of Congress, although few, perhaps, have considered how it came into existence. Mr. Cushing, whom the Senator cites, explains it, and in a way to furnish no authority for a minority instead of a majority in a legislative body. The rule prevailed in England. The colonies of Virginia and New York adopted it. From these, as they became States, it gradually extended throughout the country. A different rule was carried to New England by the Puritan Fathers. Even popular elections were by the

[1] Law and Practice of Legislative Assemblies in the United States (2d edit.), § 126, p. 47.

rule of the majority, as is explained by the same learned authority.

"The charter of the Colony of the Massachusetts Bay being that of a trading company, and not municipal in its character, the officers of the Colony were originally chosen at general meetings of the whole body of freemen, precisely as at the present day the directors of a business corporation, a bank, for example, are chosen by the stockholders at a general meeting. In the choice of Assistants, who were to be eighteen in number, at these meetings of the Company, or, as they were called, Courts of Election, the practice seems to have been for the names of the candidates to be regularly moved and seconded, and put to the question, one by one, in the same manner with all other motions. This was then, as it is now, the mode of proceeding in England, in the election of the Speaker of the House of Commons, and in the appointment of committees of the House, when they are not chosen by ballot. Probably, also, it was the usual mode of proceeding in electing the officers of a private corporation or company. In voting upon the names thus proposed, it was ordered — with a view, doubtless, to secure the independence and impartiality of the electors — that the freemen, instead of giving an affirmative or negative voice in the usual open and visible manner, should give their suffrages by ballot, and for that purpose should 'use Indian corn and beans: the Indian corn to manifest election, the beans contrary.' The names of the candidates being thus moved and voted upon, each by itself, it followed, of course, that no person could be elected but by an absolute majority."[1]

The rule, thus curiously explained, continued in Massachusetts down to a recent day; at last it yielded

[1] Law and Practice of Legislative Assemblies in the United States (2d edit.), Appendix, IV., p. 996.

to the exigency of public convenience, so that at this moment, I believe, popular elections throughout the United States are by the plurality rule. But I repeat, that this is no authority for overturning the rule of the majority in a legislative body, having in its favor so many reasons of law and tradition.

I have only alluded to the Law of Corporations; but this law is of weight in determining the present case. According to this law, the rule of the majority must prevail. Indeed, an eminent jurist says that this rule is according to the Law of Nature, as it is unquestionably according to the Roman Law, and the modern law of civilized states.[1] But what is a legislative body but a political corporation? Therefore, when asked if a Legislature, even by legislative act, may set aside the rule of the majority in the election of Senators, I must candidly express a doubt. The Constitution confides this power to the "Legislature"; but the "Legislature" consists of a majority. *Ubi major pars est, ibi totum:* "Where the greater part is, there is the whole." Such is an approved maxim of the law; and this maxim has in its support, first, the Law of Nature, secondly, the Law of Corporations, thirdly, the Parliamentary Law, and, fourthly, the principles of republican government. Who ever thought of saying, Where the minority is, there is the whole?

But we are not asked now to decide the question, whether the Legislature, by legislative act, may substitute the rule of a minority for the majority. That question is not necessarily before us. In the present case there has been no legislative act; and the question is, whether the rule of the minority may be sub-

[1] Savigny, System des heutigen Römischen Rechts, § 97, Band II. p. 329.

stituted for the majority by the abnormal body known as joint meeting. On this point the conclusion is clear. Even assuming that this substitution may be made by legislative act, it does not follow that it may be made in joint meeting.

Surely, such a change is of immense gravity, and should be made only under all possible solemnities and safeguards. If ever there was occasion for the delays and precautions provided by legislative proceedings, with three different readings in each separate House, it must be when such a change is in question. Such surely is the suggestion of reason. But the Constitution itself, which delegates to the "Legislature" of each State the power to *prescribe the manner* of electing Senators, uses language not open to evasion. This power is to be exercised by the "Legislature," which may prescribe the manner. It is not to be exercised by any other body than the Legislature; and the manner is to be prescribed by the Legislature. But, assuming that it may be exercised in joint meeting, it is clear that this must be in pursuance of some legislative act, prescribing in advance the manner.

Supposing the case doubtful, then I submit that all presumptions and interpretations must tend to support the rule of a majority. In other words, so important a rule, having its foundation in the Law of Nature, the Law of Corporations, Parliamentary Law, and the principles of republican institutions, cannot be set aside without the plainest and most positive intendment. It cannot be done by inference or construction. If ever there was occasion where every doubt was to be counted against the assumption of power, it is the present. I know very little of cards, but I remember a rule of

Hoyle, "When you are in doubt, take the trick." Just the reverse must be done in a case like the present, involving so important a principle: when you are in doubt, do not take the trick. This is a republican government, and surely you will not abandon the first principle of a republican government without good reason. According to received maxims of law, you must always incline in favor of Liberty. In the same spirit you must always incline in favor of every principle of republican government, and especially of that vital principle which establishes the rule of the majority. Thus inclining, the way at present is easy; and here I quote another authority, very different from Hoyle. Lord Bacon, in his Maxims of the Law, after mentioning a similar presumption, says: —

"It is a rule drawn out of the depths of reason. . . . . It makes an end of many questions and doubts about construction of words: for, if the labor were only to pick out the intention of the parties, every judge would have a several sense; *whereas this rule doth give them a sway to take the law more certainly one way.*"[1]

And now, Sir, I have only to add, in conclusion, let us incline in favor of the rule of the majority. So inclining, you will at once show reverence for the republican principle and will stand on the ancient ways.

The question was then taken on an amendment, moved by Mr. Clark, of New Hampshire, to insert the word "not" before the word "duly" in the resolution of the Committee, and also before the word "entitled," so that it should read that he "was not duly elected, and is not entitled to his seat." This amendment was lost, — Yeas 19, Nays 21. The question then recurred on the resolution of the Committee. Upon the conclusion of the calling of the roll, the vote stood,

[1] Maxims, Reg. 3.

Yeas 21, Nays 20, when Mr. Morrill, of Maine, said, "Call my name." This was done, and he said, "I vote nay." Mr. Stockton, who had not voted, rose, and, after stating that his colleague, Mr. Wright, was at home, said, "When he was last in this Chamber, he told me, as he left the Hall, that he would not go home, if it were not for the fact that he had paired off with the Senator from Maine. Mr. President, I ask that my name be called." His name was then called, and he voted in the affirmative, so that the result was, Yeas 22, Nays 21. Meanwhile Mr. Morrill stated the circumstances with regard to his original pair with Mr. Wright and his withdrawal from it. The result was then declared, — Yeas 22, Nays 21, — making a majority in the affirmative, and the resolution was treated as adopted.

The sequel of these proceedings, ending in the passage of a resolution, moved by Mr. Sumner, "that the vote of Mr. Stockton be not received," and the adoption of a resolution declaring him "not entitled to a seat as Senator," will appear under the next article.

A SENATOR CANNOT VOTE FOR HIMSELF.

Speech in the Senate, on the Vote of Hon. John P. Stockton affirming his Seat in the Senate, March 26, 1866.

March 26th, immediately after the reading of the Senate journal, Mr. Sumner rose to what he called a question of privilege, and moved "that the journal of Friday, March 23, 1866, be amended by striking out the vote of Mr. Stockton on the question of his right to a seat in the Senate." The circumstances of this vote appear at the close of the last article. On his motion Mr. Sumner said: —

THERE are two ways, I believe, if there are not three, but there are certainly two ways of meeting the question presented by the vote of Mr. Stockton. I use his name directly, because it will be plainer and I shall be more easily understood. I say there are two ways in which the case may be met. One is, by motion to disallow the vote; the other, by motion, such as I have made, to amend the journal. Perhaps a third way, though not so satisfactory to my mind, would be by motion to reconsider; but I am not in a condition to make this motion, as I did not vote with the apparent majority. I call your attention, however, at the outset, to two ways, — one by disallowing the vote, and the other by amending the journal. But behind both, or all three, arises the simple question, Had Mr. Stockton a right to vote? To this it is replied, that his

name was on the roll of the Senate, and accordingly was called by our Secretary; to which I answer, — and to my mind the answer is complete, — The rule of the Senate must be construed always in subordination to the principles of Natural Law and Parliamentary Law, and therefore you are brought again to the question with which I began, Had Mr. Stockton a right to vote?

Had he a right to vote, first, according to the principles of Natural Law, or, in other words, the principles of Universal Law? I take it there is no lawyer, there is no man even of the most moderate reading, who is not familiar with the principle of jurisprudence, recognized in all countries and in all ages, that no man can be a judge in his own case. That principle has been reduced to form among the maxims of our Common Law, — *Nemo debet esse judex in propria sua causa.* As such it has been handed down from the earliest days of the mother country. It was brought here by our fathers, and has been cherished sacredly by us as a cardinal rule in every court of justice. No judge, no tribunal, high or low, can undertake to set aside this rule. I have in my hand the most recent work on the Maxims of Law, where, after quoting this rule, the learned writer says: —

"It is a fundamental rule in the administration of justice, that a person cannot be judge in a cause wherein he is interested."[1]

In another place, the same learned writer says: —

"It is, then, a rule always observed in practice, and of the application of which instances not unfrequently occur

[1] Broom, Legal Maxims, (3d edit.,) p. 111.

that, where a judge is interested in the result of a cause, he cannot, either personally or by deputy, sit in judgment upon it." [1]

This rule had its earliest and most authoritative judicial statement in an opinion by an eminent judge of England, who has always been quoted for integrity in times when integrity was rare: I mean Chief Justice Hobart, of the Court of Common Pleas. In his own Reports, cited as Hobart's Reports, I call attention to the case of *Day* v. *Savadge*, where this learned magistrate said: —

"It was against right and justice, and against natural equity, to allow them [the Mayor and Aldermen of London] their certificate, wherein they are to try and judge their own cause."

And then he says, in memorable language, which has made his name famous: —

"Even an Act of Parliament, made against natural equity, as, to make a man judge in his own case, is void in itself; for *jura naturæ sunt immutabilia*, and they are *leges legum*." [2]

Thus strongly and completely did he cover the present case, reaching forward with judgment. According to him, even an Act of Parliament making a man judge in his own case is void. But, Sir, he was not alone. His great contemporary, and our teacher at this hour, Sir Edward Coke, in a very famous case, known as *Bonham's*, which I have not before me now, but which is referred to in other cases, lays down the same rule, — that a court of justice will not even recognize an Act

[1] Broom, Legal Maxims, (3d edit.,) p. 116.
[2] Hobart, R., 86, 87.

of Parliament, if it undertakes to make a man judge in his own case.[1]

But another judge, who, as lawyer and authority in courts down to this day, perhaps excels even the two already cited, — I mean Lord Chief Justice Holt, — has explained and developed this principle in masterly language. I refer to what is known as Modern Reports, in the case of *The City of London* v. *Wood*, where he says: —

"I agree, where the city of London claims any freedom or franchise to itself, there none of London shall be judge or jury; for there they claim an interest to themselves against the rest of mankind."

He then explains the principle: —

"It is against all laws, that the same person should be party and judge in the same cause, for it is manifest contradiction; for the party is he that is to complain to the judge, and the judge is to hear the party; the party endeavors to have his will, the judge determines against the will of the party, and has authority to enforce him to obey his sentence: and can any man act against his own will, or enforce himself to obey? The judge is agent, the party is patient, and the same person cannot be both agent and patient in the same thing; but it is the same thing to say that the same man may be patient and agent in the same thing as to say that he may be judge and party, and it is manifest contradiction. And what my Lord Coke says in *Dr. Bonham's Case*, in his 8 Co., is far from any extravagancy; for it is a very reasonable and true saying, that, if an Act of Parliament should ordain that the same person should be party and judge, or, which is the same thing, judge in his own cause, it would be a void Act of Parlia-

[1] 8 Coke, R., 118.

ment; for it is impossible that one should be judge and party, for the judge is to determine between party and party, or between the Government and the party; and an Act of Parliament can do no wrong, though it may do several things that look pretty odd, for it may discharge one from his allegiance to the Government he lives under and restore him to the state of Nature, but it cannot make one that lives under a government judge and party."[1]

These are the words of Chief Justice Holt. It will be observed that three eminent judges, Hobart, Coke, and Holt, all found the inevitable conclusion on the immutable principles of Natural Law, that law which is common to all countries. It is the very law of which Cicero spoke in the memorable sentence of his treatise on the Republic, when he said that there was but one law for all countries, now and in all times, the same at Athens as in Rome.[2] It is also that universal law to which the great English writer, Hooker, alluded, when he said that her seat is the bosom of God; all things on earth do her homage, — the least as feeling her care, and the greatest as not exempt from her power. To this Universal Law all your legislation must be brought as to a touchstone; and all your conduct in this Chamber, and all your rules, must be in accordance with it. Therefore I say, as I began, the practice of calling the roll of the Senate must be interpreted in subordination to this commanding rule of Universal Law.

This is not all. I said that it was forbidden, not

[1] 12 Modern Reports, 687, 688.

[2] "Nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium deus." — *De Republica*, Lib. III. c. 22.

only by Natural Law, but also by Parliamentary Law. Of course, Parliamentary Law in itself must be in harmony with Natural Law; but Parliamentary Law has undertaken in advance to deal with this very question. There is no express rule of the Senate on the subject, but here is a rule of the other House: —

"No member shall vote on any question in the event of which he is immediately and particularly interested." [1]

This is but an expression in parliamentary language of what I have announced as the rule of universal jurisprudence. But, Sir, this rule was borrowed from the rules of the British House of Commons, one of which is, —

"If anything shall come in question touching the *return or election* of any member, he is to withdraw during the time the matter is in debate." [2]

I quote from May's Parliamentary Law. From another work of authority, Dwarris on Statutes, I now read: —

"No member of the House may be present in the House when a bill or any other business concerning himself is debating; while the bill is but reading or opening, he may." [3]

Then, after citing two different cases, the learned writer proceeds: —

"This rule was always attended to in questions relative to the seat of a member on the hearing of controverted elections, and has been strictly observed in cases of very great moment." [4]

[1] Rules and Orders of the House of Representatives: Rule 28 [29].
[2] May, Treatise on the Law, etc., of Parliament, (5th edit.,) p. 598.
[3] Dwarris, Treatise on Statutes, (2d edit.,) Part I. p. 220.
[4] Ibid.

Again the same writer says: —

"Where a member appeared to be 'somewhat' concerned in interest," —

That is the phrase, only "somewhat concerned," —

"his voice has been disallowed after a division."[1]

Then, again, our own eminent countryman, Cushing, who was quoted so frequently the other day, in his elaborate book on the Law and Practice of Legislative Assemblies, expresses himself as follows: —

"Cases are frequent in which votes received have been disallowed."[2]

Again he says: —

"Votes have also been disallowed after the numbers have been declared, on the ground that the members voting were interested in the question; and, in reference to this proceeding, there is no time limited within which it must take place."[3]

Thus, Sir, it is apparent that Parliamentary Law is completely in harmony with Natural Law. Indeed, if it were not, it would be our duty to correct it, that it might be made in harmony.

And now, after this statement of the law, which I believe completely applicable to the present case, I am brought to consider the remedy. I said at the outset that there were two modes: one was by disallowing the vote on motion to that effect, and the other by amending the journal. But first let me call attention to the practice in disallowing a vote on motion. I have

[1] Dwarris, Treatise on Statutes, (2d edit.,) Part I. p. 245.
[2] Law and Practice of Legislative Assemblies (2d edit.), p. 711.
[3] Ibid., p. 713.

already read from Dwarris, where the vote was disallowed, and I will read it again: —

"Where a member appeared to be 'somewhat' concerned in interest, his voice has been disallowed after a division."

MR. TRUMBULL. Was that at the same or a subsequent session?

MR. SUMNER. It does not appear whether it was at a subsequent session, but it simply appears that it was after the division. The Senator understands that the division in the British Parliament corresponds with what we call the yeas and nays. They "divide," as it is called, — the yeas and the nays being counted by tellers as they pass.

The American authority is in harmony with the English already quoted. I read again from Cushing.

"The disallowance of votes usually takes place, when, after the declaration of the numbers by the Speaker, it is discovered that certain members who voted were not present when the question was put, or *were so interested in the question*" —

Mark those words, if you please, Sir —

"that they ought to have withdrawn from the House.

"It has already been seen, that, when it is ascertained that members have improperly voted, on a division, who were not in the House when the question was put, if this takes place before the numbers are declared by the Speaker, such votes are disallowed by him at once, and not included in the numbers declared. If the fact is not ascertained until after the numbers are declared, it is then necessary that there should be a motion and vote of the House for their disallowance; and this may take place, for anything that appears to the contrary, at any time during the session, and

has in fact taken place after the lapse of several days from the time the votes were given." [1]

Thus much for the remedy by disallowance; and this brings me to the proposition by amending the journal. That remedy, from the nature of the case, is applicable to an error apparent on the face of the journal. I ask Senators to note the distinction. It is applicable to an error apparent on the face of the journal. If the interest of a Senator appeared only by evidence *aliunde*, by evidence outside, as, for instance, that he had some private interest in the results of a pending measure by which he was disqualified, his vote could be disallowed only on motion; but if the incapacity of the Senator to vote on a particular occasion appears on the journal itself, I submit that the journal must be amended by striking out his vote. The case is patent. We have already seen, by the opinions of eminent judges, great masters of law in different ages, that what is contrary to the principles of Natural Law must be void; and English judges tell us that even an Act of Parliament must be treated as void, if it undertakes to make a man judge in his own case.

Now, Sir, apply that principle to your journal. It has recognized a man as judge in his own case. I insist that the recognition was void. Is not the true remedy by amending the journal so as to strike out his name? The journal discloses the two essential facts, — first, that as Senator he was party to the proceedings, secondly, that as Senator he was judge in the proceedings; and since these two facts appear on the face of the journal, it seems to me that the only substantial remedy is by amending it, so that a precedent of such

[1] Law and Practice of Legislative Assemblies (2d edit.), pp. 712, 713.

a character shall not find place hereafter in the records of the Senate.

Sir, this question is not insignificant; it is grave. It belongs to the privileges of the Senate. I might almost say, it is closely associated with the character of the Senate. Can Senators sit here and allow one of their number, on an important occasion, to come forward and play at the same time the two great parts, party and judge? And yet these two great parts have been played, and your journal records the performance. Suppose Jesse D. Bright, some years since expelled from the Senate, after animated debate lasting weeks, and our excellent Judiciary Committee reporting in his favor, — suppose he had undertaken to vote for himself, — is there a Senator who would not have felt it wrong to admit his vote? The defendant showed no want of hardihood, but he did not offer to vote for himself. But, if Mr. Stockton can vote for himself, how can you prevent a Senator from voting to save himself from expulsion? The rule must be the same in the two cases. Therefore I ask that the journal be rectified, in harmony with Parliamentary Law and the principles of Universal Law.

In making this motion, I have no other motive than to protect the rights of the Senate, and to establish those principles of justice which will be a benefit to our country for all time. You cannot lightly see a great principle sacrificed. You abandon your duty, if you allow an elementary principle of justice to be set at nought in this Chamber. Be it, Sir, our pride to uphold those truths and to stand by those principles. I know no way in which we can do it now so completely as in the motion I have made. The vote of

Mr. Stockton was null and void. It should be treated as if it had not been given.

I have no doubt that the motion to correct the journal would be in order even at a late day. I believe that at any day any Senator might rise in his place and move to expunge from the journal a record in itself derogatory to the body. I have in my hands a reference to the case of John Wilkes, who, you will remember, just before our Revolution, was excluded from Parliament, while his competitor, Luttrell, was declared duly elected. The decision of Parliament, so the history records, convulsed the whole kingdom for thirteen years, but after that long period it was expunged from the journal, — I now quote the emphatic words, — "as being subversive of the rights of the whole body of electors of this kingdom." I submit, Sir, the record in your journal is subversive of the great principle of jurisprudence on which the rights of every citizen depend.

Mr. Reverdy Johnson followed, criticizing Mr. Sumner. He concluded by saying: "Even supposing there was the slightest want of delicacy in casting a vote upon such a question by the member whose seat is contested, it was in the particular instance more than justified by the circumstances existing at the time the vote was cast."

Mr. Trumbull said: —

"I believe, as I said before, that the Senator from New Jersey is entitled to his seat; but I do not believe that he is entitled to hold his seat by his own vote. He would have held his seat without his own vote. The vote upon the resolution was a tie without the vote of the Senator from New Jersey; and that would have left him in his seat, he already having been sworn in as a member. It is not necessary that the resolution should have passed. He is here as a Senator, and it would require an affirmative vote to deprive him of his seat as a Senator."

He then avowed his willingness to move a reconsideration of the vote by which the resolution was carried, "if that is necessary to accomplish the object."

Mr. Sumner, after saying, that, when he brought forward his motion, he had no reason to suppose that any Senator would move a reconsideration, proceeded : —

The Senator from Illinois says, Suppose we strike out Mr. Stockton's name, what will be the effect? I answer, To change all subsequent proceedings, and make them as if he had not voted, so that the whole record must be corrected accordingly. The Senator supposes a bill passed by mistake afterwards discovered, and asks if the bill could be arrested. Clearly, if not too late. A familiar anecdote with regard to the passage of the Act of *Habeas Corpus* in England will help answer the Senator. According to the story, — it is Bishop Burnet who tells it,[1] — this great act, which gave to the English people what has since been called the palladium of their liberties, passed under a misapprehension created by a jest. It seems that among the affirmative peers walking through the tellers was one especially fat, when it was said, "Count ten," — and ten was counted for the bill, thus securing its passage. I am not aware that the mistake was divulged until too late for correction. But we have had in the other House two different cases, which answer precisely the inquiry of the Senator.

Here Mr. Sumner read from the House Journal, 29th Congress, 1st Session, July 6, 1846, p. 1032, a motion by Mr. McGaughey with regard to the Journal. He next read from the House Journal, 31st Congress, 1st Session, September 10, 1850, p. 1436, the following entry : —

"The Speaker stated that the result of the vote of the House on yesterday on the passage of the bill of the House (No. 387) to supply a deficiency in the appropriation for pay and mileage of members of Congress for the present session had been erroneously announced, and that the subsequent proceedings upon the said bill would consequently fall.

[1] History of His Own Times (fol. edit.), Vol. I. p. 485.

"The Speaker then announced the vote to be, Yeas 78, Nays 76.

"So the bill was passed; and the journal of yesterday was ordered to be amended accordingly."

In conformity with this precedent, Mr. Sumner did not doubt that by the correction of the journal the vote affirming Mr. Stockton's seat would fall, and he thought it better to follow this course; but, anxious to avoid a protracted discussion, and to "seek a practical result," he was willing to withdraw his proposition.

Mr. Sherman, of Ohio, thought that Mr. Sumner would "err in withdrawing the proposition." Mr. Davis, of Kentucky, maintained "that Mr. Stockton had an undoubted right to vote." Mr. Stockton followed in vindication of his vote, referring especially to an alleged understanding between Mr. Morrill and Mr. Wright, which he said was violated by the vote of the former.

"I never looked upon this as my case. It was the case of the Senator from New Jersey. And when one gentleman from New Jersey, my colleague, was deprived of his vote by — what shall I term it? I do not propose to violate parliamentary propriety by terming it anything, — but when one Senator from New Jersey by artifice was prevented from recording his vote, as he would have done, the other was not to vote from delicacy.

"Mr. President, there are eleven States out of the Union, and they wanted to put New Jersey out; and I did not mean that they should do it from motives of delicacy on my part."

Mr. Trumbull said, "Let us settle at this time that a member has no right to vote upon the question. . . . . I think, upon consideration, that perhaps the best way to arrive at it is by the adoption of the resolution offered by the Senator from Massachusetts." Mr. Lane, of Kansas, who had voted to sustain Mr. Stockton, said, "I was never more surprised in my life than when the Senator from New Jersey asked to vote and did vote." Soon afterwards, Mr. Stockton said, "I rise to withdraw my vote, with the permission of the Senate," and proceeded to explain his position. In reply to an inquiry from Mr. Sumner, the presiding officer [Mr. CLARK, of New Hampshire] said, "The Chair is of opinion that he cannot, unless by the unanimous consent of the Senate he wishes to correct the journal." Mr. Sumner formally withdrew his motion to correct the journal, "with the understanding that the Senator from Vermont [Mr. POLAND] makes the motion for a reconsideration." Mr. Poland accordingly moved the reconsideration, and this was agreed to, so that the original question was again before the Senate. There was still debate and perplexity as to the proper proceeding in order to repair the error in receiving Mr. Stockton's vote, when Mr. Sumner moved: —

"That the vote of Mr. Stockton be not received, in determining the question of his seat in the Senate."

Mr. Sumner remarked: —

I HAVE no personal question with the Senator; I have for him nothing but kindness and respect. I deal with this question simply as a question of principle. The Senator tells us that he will not vote, when the case comes up again. I believe him; he will not vote. But, Sir, he has taken the Constitution in his hand, and, holding it up, he tells us that he finds in that instrument authority for it in his case. . . . .

Since the Senator makes the claim, it is important for us to meet it, in some way or other, — by correcting the journal, or by a resolution declaring that the Senator shall not vote, — fixing the precedent forever, so that hereafter we shall not be left to the uncertain will or opinion of a Senator whose seat may be in question. We must rely, not upon his honor, but upon the Constitution, interpreted by this body and fixed beyond recall. Therefore I think still it would be better, if the Senate had corrected its journal. Being a vote that in itself was null and void, it was to be treated as not having been given.

The Senator asks to withdraw his vote. To withdraw what? Something which has never been done, — that is, legally done. There is no legal vote of the Senator. His name is recorded as having voted, but it is a vote that at the time was null and void. There is nothing, therefore, for him to withdraw, but something for the Senate to annul.

Mr. Sherman moved the reference of Mr. Sumner's resolution to the Committee on the Judiciary. The Senate refused to refer, — Yeas 18, Nays 22. The resolution was then adopted.

March 27th, the consideration of the resolution declaring Mr. Stockton "duly elected" was resumed, when, after the failure of an effort to postpone it, Mr. Clark moved to amend it by declaring that he "is not entitled to a seat as Senator." On this amendment Mr. Stockton spoke at length. The amendment was adopted, — Yeas 22, Nays 21, — Mr. Stockton not voting. He said, "I desire to state, in order that it may be a part of the record, that I do not vote on this question, on account of the resolution passed by the Senate yesterday." The resolution as amended was then adopted, — Yeas 23, Nays 20.

REMODELLING OF THE SUPREME COURT OF THE UNITED STATES.

Remarks in the Senate, on the Bill to reorganize the Judiciary of the United States, April 2, 1866.

This bill, reported from the Judiciary Committee by Mr. Harris, of New York, was considered for several days in the Senate, and finally passed that body. It failed in the House of Representatives. Another bill, having a similar object, afterwards became a law.[1]

On the present bill Mr. Sumner remarked: —

WE all know that the Supreme Court is now some three years behind in its business, and the practical question is, How are we to bring relief? There are two different ways. One is by limiting appeals, so that hereafter it shall have less business. Another, and to my mind the better way, would be to allow appeals substantially as now, but to limit the court to the exclusive hearing of those appeals. Of course that raises the question, whether the judges of the Supreme Court sitting here in Washington should have duties elsewhere. That is a question of practice, and also of theory. Since I have been in the Senate, it has been very often discussed, formally or informally, and there have been differences of opinion upon it. I believe the inclination has always been that judges are better in

[1] Act of April 10, 1869: Statutes at Large, Vol. XVI. pp. 44, 45.

the discharge of their duties from experience at *Nisi Prius*. That opinion, I take it, is derived from England; and yet I need not remind the Senator from New York that the two highest courts in England are held by judges who at the time do nothing at *Nisi Prius*, and do not go the circuit: I refer to the court of the Privy Council, and to the highest court of all, the court of the House of Lords. If you pass over to France, where certainly the judicature is admirably arranged on principles of science, where I believe justice is assured, you have the highest court, known as the Court of Cassation, composed of persons set apart exclusively for appeals, — never leaving Paris, and never hearing any other business except that which comes before them on appeal.

I refer to these instances for illustration. The Senate is also aware, that, in the beginning of our Government, when Washington invited his first Chief Justice and his Associates to communicate their views on the subject of the Judiciary system, the answer, prepared by John Jay, assigned strong reasons why the Supreme Court should be exclusively for the consideration of appeals.[1] The other business was by circuit judges. This recommendation was put aside, and the existing system prevailed. Justice has been administered to the satisfaction of the country, reasonably at least, under this system.

But now we are driven to a pass: justice threatens to fail in the Supreme Court, unless we provide relief. Is the bill of the Senator from New York adequate? Speaking frankly, I fear that it is not; and I fear

[1] Story, Commentaries on the Constitution, § 1573, Vol. III. pp. 437, seqq., note.

that the proposition of my friend from Wisconsin [Mr. HOWE], if adopted, will still further limit the relief which my friend from New York proposes. I am disposed to believe that the only real relief will be found in setting apart the judges of our highest court exclusively for the consideration of appeals. They would then sit as many months in the year as they could reasonably give to judicial labor. They might, perhaps, hear every case that could reach the tribunal, while they had a vacation to themselves in which to review the science of their profession and add undoubtedly to their attainments. I remember that one of the ablest lawyers in England, in testimony some years ago before a Committee of the House of Commons on the value of what is known as the vacation, — I refer to Sir James Scarlett, afterward Lord Abinger, Lord Chief Baron, — testified that for one, as an old lawyer, he regarded the vacation as important, because it gave him an opportunity to review his studies and to read books that he could not read in the urgency of practice. I have heard our own judges make similar remarks.

Now the question is, whether the present bill meets the case. Does it supply the needed relief? I fear it does not; and I really should be much better satisfied, if my friend from New York had dealt more boldly with the whole question by providing a court of appeal, composed of the eminent judges of the land, devoted exclusively to appeals, and leaving to other judges the hearing of cases at *Nisi Prius*.

THE LATE SOLOMON FOOT, SENATOR FROM VERMONT.

Speech in the Senate, on his Death, April 12, 1866.

MR. PRESIDENT, — There is a truce in this Chamber. The antagonism of debate is hushed. The sounds of conflict have died away. The white flag is flying. From opposite camps we meet to bury the dead. It is a Senator we bury, not a soldier.

This is the second time during the present session that we have been called to mourn a distinguished Senator from Vermont. It was much to bear the loss once. Its renewal now, after so brief a period, is a calamity without precedent in the history of the Senate. No State before has ever lost two Senators so near together.

Mr. Foot, at his death, was the oldest Senator in continuous service. He entered the Senate in the same Congress with the Senator from Ohio [Mr. Wade] and myself; but he was sworn at the executive session in March, while the two others were not sworn till the opening of Congress at the succeeding December. During this considerable space of time I have been the constant witness to his life and conversation. With a sentiment of gratitude I look back upon our relations, never from the beginning impaired or darkened by dif-

ference. For one brief moment he seemed disturbed by something that fell from me in the unconscious intensity of my convictions; but it was for a brief moment only, and he took my hand with a genial grasp. I make haste also to declare my sense of his personal purity and his incorruptible nature. Such elements of character, exhibited and proved throughout a long service, render him an example for all. He is gone; but these virtues "smell sweet and blossom in the dust."

He was excellent in judgment. He was excellent also in speech; so that, whenever he spoke, the wonder was that he who spoke so well should speak so seldom. He was full, clear, direct, emphatic, and never was diverted from the thread of his argument. Had he been moved to mingle actively in debate, he must have exerted a commanding influence over opinion in the Senate and in the country. How often we have watched him tranquil in his seat, while others without his experience or weight occupied attention! The reticence which was part of his nature formed a contrast to that prevailing effusion where sometimes the facility of speech is less remarkable than the inability to keep silence; and, again, it formed a contrast to that controversial spirit which too often, like an unwelcome wind, puts out the lights while it fans a flame. And yet in his treatment of questions he was never incomplete or perfunctory. If he did not say, with the orator and parliamentarian of France, the famous founder of the "Doctrinaire" school of politics, M. Royer-Collard, that respect for his audience would not permit him to ask attention until he had reduced his thoughts to writing, it was evident that he never spoke in the Senate without careful preparation. You remember well his com-

memoration of his late colleague, only a few short weeks ago, when he delivered a funeral oration not unworthy of the French school from which this form of eloquence is derived. Alas! as we listened to that most elaborate eulogy, shaped by study and penetrated by feeling, how little did we think that it was so soon to be echoed back from his own tomb!

Not in our debates only did this self-abnegation show itself. He quietly withdrew from places of importance on committees to which he was entitled, and which he would have filled with honor. More than once I have known him insist that another should take the position assigned to himself. He was far from that nature which Lord Bacon exposes in pungent humor, when he speaks of "extreme self-lovers," that "will set an house on fire and it were but to roast their eggs."[1] And yet it must not be disguised that he was happy in the office of Senator. It was to him as much as his "dukedom" to Prospero. He felt its honors and confessed its duties. But he was content. He desired nothing more. Perhaps no person appreciated so thoroughly what it was to bear the commission of a State in this Chamber. Surely no person appreciated so thoroughly all the dignities belonging to the Senate. Of its ceremonial he was the admitted arbiter.

There was no jealousy, envy, or uncharitableness in him. He enjoyed what others did, and praised generously. He knew that his own just position could not be disturbed by the success of another. Whatever another may be, whether more or less, a man must always be himself. A true man is a positive, and not a relative quantity. Properly inspired, he will know

[1] Essays: Of Wisdom for a Man's Self.

that in a just sense nobody can stand in the way of another. And here let me add, that, in proportion as this truth enters into practical life, we shall all become associates and coadjutors rather than rivals. How plain, that, in the infinite diversity of character and talent, there is place for every one! This world is wide enough for all its inhabitants; this republic is grand enough for all its people. Let every one serve in his place according to his allotted faculties.

In the long warfare with Slavery, Mr. Foot was from the beginning firmly and constantly on the side of Freedom. He was against the deadly compromises of 1850. He linked his shield in the small, but solid, phalanx of the Senate which opposed the Nebraska Bill. He was faithful in the defence of Kansas, menaced by Slavery; and when at last this barbarous rebel took up arms, he accepted the issue, and did all he could for his country. But even the cause which for years he had so much at heart did not lead him into debate, except rarely. His opinions appeared in votes, rather than in speeches. But his sympathies were easily known. I call to mind, that, on first coming into the Senate, and not yet personally familiar with him, I was assured by Mr. Giddings, who knew him well, that he belonged to the small circle who would stand by Freedom, and the Antislavery patriarch related pleasantly, how Mr. Foot, on his earliest visit to the House of Representatives after he became Senator, drew attention by coming directly to his seat and sitting by his side in friendly conversation. Solomon Foot by the side of Joshua R. Giddings, in those days, when Slavery still tyrannized, is a picture not to be forgotten. If our departed friend is not to be named among those who have borne the

burden of this great controversy, he cannot be forgotten among those whose sympathies with Liberty never failed. Would that he had done more! Let us be thankful that he did so much.

There is a part on the stage known as "the walking gentleman," who has very little to say, but always appears well. Mr. Foot might seem, at times, to have adopted this part, if we were not constantly reminded of his watchfulness in everything concerning the course of business and the administration of Parliamentary Law. Here he excelled, and was master of us all. The division of labor, which is the lesson of political economy, is also the lesson of public life. All cannot do all things. Some do one, others do another,— each according to his gifts. This diversity produces harmony.

The office of President *pro tempore* among us grows out of the anomalous relations of the Vice-President to the Senate. There is no such officer in the other House, nor was there in the House of Commons until very recently, when we read of a "Deputy Speaker," which is the term by which he is addressed, when in the chair. No ordinary talent can guide and control a legislative assembly, especially if numerous or excited by party differences. A good presiding officer is like Alexander mounted on Bucephalus. The assembly knows its master, "as the horse its rider." This was preëminently the case with Mr. Foot, who was often in the chair, and for a considerable period our President *pro tempore*. Here he showed special adaptation and power. He was in person "every inch" a President; so also was he in every sound of the voice. He carried into the chair the most marked individuality that has been seen

there during this generation. He was unlike any other presiding officer. "None but himself could be his parallel." His presence was felt instantly. It filled this Chamber from floor to gallery. It attached itself to everything done. Vigor and despatch prevailed. Questions were stated so as to challenge attention. Impartial justice was manifest at once. Business in every form was handled with equal ease. Order was enforced with no timorous authority. If disturbance came from the gallery, how promptly he launched the fulmination! If it came from the floor, you have often seen him throw himself back, and then with voice of lordship, as if all the Senate were in him, insist that debate should be suspended until order was restored. "The Senate must come to order!" he exclaimed; and, like the god Thor, beat with hammer in unison with voice, until the reverberations rattled like thunder in the mountains.

The late Duc de Morny, who was the accomplished President of the Legislative Assembly of France, in a sitting shortly before his death, after sounding his crier's bell, which is the substitute for the hammer among us, exclaimed from the chair: "I shall be obliged to mention by name the members whom I find conversing. I declare to you that I shall do so, and I shall have it put in the 'Moniteur.' You are here to discuss and to listen, not to converse. I promise you that I will do what I say to the very first I catch talking." Our President might have found occasion for a similar speech, but his energy in the enforcement of order stopped short of this menace. Certainly he did everything consistent with the temper of the Senate, and he showed always what Sir William Scott, on one

occasion, in the House of Commons, placed among the essential qualities of a Speaker, when he said that "to a jealous affection for the privileges of the House" must be added "an awful sense of its duties."[1]

Accustomed as we have become to the rules which govern legislative proceedings, we are hardly aware of their importance in the development of liberal institutions. Unknown in antiquity, they were unknown also on the European continent until latterly introduced from England, which was their original home. They are among the precious contributions which England has made to modern civilization; and yet they did not assume at once their present perfect form. Mr. Hallam tells us that even as late as Queen Elizabeth "the members called confusedly for the business they wished to have brought forward."[2] But now, at last, these rules have become a beautiful machine, by which business is conducted, legislation moulded, and debate in all possible freedom secured. From the presentation of a petition or the introduction of a bill, all proceeds by fixed processes, until, without disorder, the final result is reached and a new law takes its place in the statute-book. Hoe's printing-press or Alden's type-setter is not more exact in operation. But the rules are more even than a beautiful machine; they are the very temple of Constitutional Liberty. In this temple our departed friend served to the end with pious care. His associates, as they recall his stately form, silvered by time, but beaming with goodness, will not cease to cherish the memory of such service. His image will

[1] Address on nominating Hon. Charles Abbot to the Speakership of the House of Commons, November 16, 1802: Hansard's Parliamentary History, Vol. XXXVI. col. 915.

[2] Constitutional History of England (London, 1829), Vol. I. p. 358, note.

rise before them as the faithful presiding officer, by whom the dignity of the Senate was maintained, its business advanced, and Parliamentary Law upheld.

He had always looked with delight upon this Capitol, — one of the most remarkable edifices of the world, — beautiful in itself, but more beautiful still as the emblem of that national unity he loved so well. He enjoyed its enlargement and improvement. He watched with pride its marble columns moving into place, and its dome as it ascended to the skies. Even the trials of the war did not make him forget it. His care secured those appropriations by which the work was forwarded to its close, and the statue of Liberty installed on its sublime pedestal. It was natural that in his last moments, as life was failing fast, he should long to rest his eyes upon an object that was to him so dear. The early light of morning had come, and he was lifted in bed that with mortal sight he might once more behold this Capitol; but another Capitol already began to fill his vision, fairer than your marble columns, sublimer than your dome, where Liberty without any statue is glorified in that service which is perfect Freedom.

COMPLETE EQUALITY IN RIGHTS, AND NOT SEMI-EQUALITY.

LETTER TO A COMMITTEE ON THE CELEBRATION OF EMANCIPATION IN THE DISTRICT OF COLUMBIA, APRIL 14, 1866.

SENATE CHAMBER, April 14, 1866.

DEAR SIR, — It will not be in my power to celebrate with you Emancipation in the District, but I rejoice that the beautiful anniversary is to be commemorated.

Looking back upon the day when that Act became a law by the signature of Abraham Lincoln, I feel how grandly it has been vindicated by the result. The sinister forebodings of your enemies are all falsified. We were told that you could not bear freedom, — that you would be lawless, idle, and thriftless. I knew the contrary; and is it not as I foretold? Who so mad as to wish back the old system of wrong?

But the work is only *half done.* The freedman, despoiled of the elective franchise, is only *half a man.* He must be made *a whole man;* and this can be only by investing him with all the rights of an American citizen. Here, too, we encounter the same sinister forebodings that stood in the way of Emancipation. We are told that you cannot bear enfranchisement, and that you will not know how to vote. I know the contrary;

and I am satisfied, further, that there can be no true repose in this country until all its people are admitted to that full equality before the law which is the essential principle of republican government. It were not enough to assure equality in what are called civil rights. This is only *semi-equality.* The equality must be complete. This I ask, not only for your sake, but also for the sake of my country, imperilled by such a denial of justice.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

DANIEL G. MUSE, ESQ.

JUSTICE TO MECHANICS IN THE WAR.

Speech in the Senate, on a Bill for the Relief of certain Contractors, April 17, 1866.

The Senate having under consideration a bill for the relief of certain contractors for the construction of vessels of war and steam machinery, Mr. Sumner said: —

MR. PRESIDENT, — I am happy to agree with the Senator from Kentucky [Mr. Guthrie] in the fundamental principle he has laid down and developed so clearly. I agree with him, that by no legislation of ours can we recognize the principle that contractors with the Government may never lose. The Senator cannot state the proposition too strongly. But I part company with him, when he undertakes to apply it to the present case. We agree on the proposition; we disagree on the application.

Had these contracts covered a period of peace, there would have been occasion for the rule of the Senator. But they were not in a period of peace; they were in a period of war. And the Senator himself has characterized the war as perhaps the greatest in history. If not made in a time of war, they were all the harder performed in those early days which were heralds of war. The practical question for us as legislators is,

whether we can shut our eyes to that condition of things. The times were exceptional; and so must the remedy be also.

I have said, had it been a season of peace, then the Senator would be right, and we should not be justified in seeking exceptionally to open the Treasury for the relief of these contractors. But, Sir, war is a mighty disturber. What force in human society, what force in business, more disturbing? Wherever it goes, it not only carries death and destruction, but derangement of business, change of pursuits, interference with the currency, and generally dislocation of the common relations of life. You cannot be blind to such a condition of things. You must not shut your eyes to its consequences, if you would do justice now.

I repeat, therefore, did these contracts grow out of a period of peace, I should not now advocate them; but it is because they grow out of a period of war, that I ask for those who have suffered by them the same justice we accord to all who have contributed to our success in that terrible war. Why, Sir, how often do we appeal in this Chamber for justice to all who have helped the great result! It is my duty constantly to plead here for justice to those freedmen who have done so much and placed you under ceaseless obligations. I hope I am not indifferent also to those national creditors who supplied the means which advanced our triumph, — nor yet again to those soldiers, whether on land or sea, who have so powerfully served the national cause. But there is still another class, for whom no one has yet spoken on this floor, who have contributed to our success not less than soldier or creditor, —

I was almost ready to say, not less than the freedman: I mean the mechanics of the country. They, Sir, have helped you carry this war to its victorious close. Without the mechanics, where would you have been? what would have been your equipments on the land? where would have been that marvellous navy on the sea? It was the skilled labor of the country, rushing so promptly to the rescue, that gave you the power which carried you on from victory to victory.

Now, Sir, the practical question is, whether these mechanics, who have done so much to turn the tide of battle, shall be losers by the skill, the labor, and the time they devoted to your triumph. Tell me not, Sir, that they acted according to contract. To that I reply, The war disturbed the contract, and it is your duty here, sitting as a high court of equity, to review all the circumstances of the case, and see in what way the remedy may be fitly applied. You cannot turn away from the equities, treating it literally and severely according to the precise terms of the contract. You must go into those vital considerations arising out of the peculiar circumstances.

Several facts are obvious to all: a Senator on the other side of the Chamber has alluded to them. In the first place, there was the general increase in the price of labor and material that ensued after these contracts were made. Nobody doubts this. There was then a change in the currency. There were, also, — what have been alluded to several times, — changes in the models of these vessels at the Navy Department, necessarily imposing upon these contractors additional expense and labor. There was another circumstance, to which my attention has been directed latterly, —

I believe, however, the Senator from Iowa [Mr. GRIMES] alluded to it yesterday, — that at the moment of the war, when labor was highest, when it was most difficult to obtain it, there came an order from the proper authorities exempting those who labored in the arsenals and public yards of the United States from enrolment. Of course, all then in private yards or with contractors, so far as they could, hurried under the national flag, that they might become workmen there, and thus obtain the coveted exemption from enrolment.

. . . . .

This order illustrates very plainly the disturbing influence from the war; and this brings me again to press this point upon your attention. I mention certain particulars in which this appeared; but I would bring home the controlling consideration that we were in a time of war, vast in proportions and most disturbing in its influence. This alone is enough to account for the failure of these contractors. We were not in a period of peace, and you err, if you undertake to hold these contractors to all the austere responsibilities proper in a period of peace.

The Senator from Kentucky said that they took the war into their calculations. Perhaps they did; but who among these contractors could take that war adequately into his calculations? Who among those sitting here or at the other end of the avenue properly appreciated the character of the great contest coming on? Sir, we had passed half a century in peace; we knew nothing of war, or of war preparations, when all at once we were called to efforts on a gigantic scale. Are you astonished that these contractors did not know more about the war than your statesmen? Be to these

contractors as gentle in judgment and as considerate as you are to others in public life who have erred in calculations with regard to it.

I have said that the interest now in question was the great mechanical interest of the country. It is an interest that is not local, as the bill is for the benefit of mechanics in all parts of the loyal States, from Maryland, in the South, to Massachusetts and Maine, in the North and East, and then stretching from New York, on the seaboard, to Missouri, beyond the Mississippi. I have a list of the States concerned, through different contractors, in this very bill, — Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, Illinois, Missouri, and even California. The interest for which I am speaking crosses the mountains and reaches to the Pacific Ocean.

I said that this was the skilled labor of the country. What labor more valuable? what service, while the war was proceeding, more important? If these mechanics did not expose their persons in the peril of battle, they gave their skill to prepare others for victory. In ancient times, the oracle said to the city in danger, "Look to your wooden walls." The oracle in our country said, "Look to your ironclads and your double-enders"; and these mechanics came forward and by ingenious labor enabled you to put ironclads and double-enders on the ocean, and thus secure the final triumph. The building of that invulnerable navy was one of the great triumphs of the war, to be commemorated on many a special field, and to be seen in the mighty results we now enjoy.

And yet again I ask, Are you ready to see contract-

ors, who have done this service, sacrificed? You do not allow the soldier to be sacrificed, nor the national creditor who has taken your stock. Will you allow the mechanic? There are many who, without your help, must suffer. One of the most enterprising and faithful in the whole country is a constituent of my own, who, during the last year, has been hurried into bankruptcy from inability to meet liabilities growing out of the war, and at this moment he finds no chance of relief except in what a just Government may return to him. My friend on my right [Mr. NYE, of Nevada] asked you to be magnanimous to these contractors. I do not put it in that way. I ask you simply to be upright. Do by them as you would be done by.

The Senator from Nevada also very fitly reminded you of the experience of other countries. He told you that England, at the close of the Crimean War, when her mechanics had suffered precisely as yours, did not allow them to be sacrificed, but every pound, every shilling, of liability under their contracts was promptly met by that Government. Will you be less just to mechanics than England? It is an old saying, that republics are ungrateful. I hope that this republic will vie with any monarchy in gratitude to those who have served it. You have shown energy in meeting your enemies. I ask you to show a commensurate energy in doing justice to those who have contributed to your success.

. . . . . .

This bill, after much debate, passed the Senate. It did not pass the House.

POWER OF CONGRESS TO COUNTERACT THE CATTLE-PLAGUE.

Remarks in the Senate, on a Resolution to print a Letter of the Commissioner of Agriculture on the Cattle-Plague, April 25, 1866.

Mr. Sherman, of Ohio, reported the following resolution from the Committee on Agriculture: —

"*Resolved*, That there be printed, for the use of the Senate, ten thousand copies of a letter of the Commissioner of Agriculture, communicating information in relation to the rinderpest or cattle-plague."

In considering the resolution, he remarked that the Committee "would like very much to report some measure of a practical character, to counteract, if possible, the cattle-plague now prevailing in Europe; but we did not see that Congress had authority to pass an effective measure." Mr. Sumner followed: —

I WAS sorry to hear two remarks of the Senator from Ohio. The first told that the cattle-plague is coming. I hope that by proper precautions it may be averted. I do trust it may never come. I will not despair that the Atlantic Ocean may be a barrier. I was sorry also for the other remark, that in his opinion Congress could not apply any efficient remedy. I make no issue on this conclusion; but I was sorry that the Senator having the question in charge had arrived at that result. It does seem to me, that, under the National Government, Congress should be able to apply

a remedy in such a case. Is not the National Government defective to a certain extent, if Congress has not that power? I open the question interrogatively now, without undertaking to express an opinion upon it.

I agree with the Senator, that it is of great importance that our people should be put on their guard; he, therefore, is right in proposing to circulate all information on the subject. But I do hope that the Senator will consider carefully whether it be not within the power of Congress, in some way or other, directly or indirectly, to apply an efficient remedy.

URGENT DUTY OF THE HOUR.

Letter to the American Antislavery Society, May 1, 1866.

Senate Chamber, May 1, 1866.

DEAR SIR, — It will not be in my power to take part at the approaching anniversary of the Antislavery Society. My duty keeps me here.

I trust that the Society, which has done so much for human rights, will persevere until these rights are established throughout the country on the impregnable foundation of the Declaration of Independence. This is not the time for relaxation of the old energies. Slavery is abolished only in name. The Slave Oligarchy still lives, and insists upon ruling its former victims.

Believing, as I do, that the National Government owes protection to the freedmen, so that they shall not suffer in rights, I insist on its plenary power over this great question, and that it may do anything needful to assure these rights. In this conviction I shall not hesitate at all times to invoke its intervention, whether to establish what are called civil rights, or that pivotal right of all, the right to elect the government which they support by taxes and by arms.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

Charles Sumner.

The President of the American Antislavery Society.

TIME AND RECONSTRUCTION.

Remarks in the Senate, on a Resolution to hasten Reconstruction, May 2, 1866.

Mr. Dixon, of Connecticut, gave notice of his intention to offer, as a substitute for the bills and resolution reported by the Joint Committee on Reconstruction, the following : —

"That the interests of peace and the interests of the Union require the admission of every State to its share in public legislation, whenever it presents itself, not only in an attitude of loyalty and harmony, but in the persons of representatives whose loyalty cannot be questioned under any constitutional or legal test."

In the debate on printing this resolution, Mr. Sumner said : —

I WAS about to say that the proposition involved in the resolution of the Senator from Connecticut is so important that it may be considered as always in order to discuss it. I do not know that we ought to pass a day without in some way considering it. I certainly do not deprecate this debate; but while so saying, I am very positive on another point. I should deprecate any effort now to precipitate decision on the question; and I most sincerely hope that the Senator from Maine [Mr. Fessenden], the Chairman of the Committee on Reconstruction, who has this matter in charge, will bear that in mind. I do not believe that Congress at this moment is in a condition to give the country the best measure on this important subject.

I am afraid that excellent Committee has listened too much to voices from without, insisting that there must be a political issue presented to the country. I have always thought such call premature. There is no occasion now for an issue. There are no elections in any States. The election in Connecticut is over; the election in New Hampshire is over. There are to be no elections before next autumn. What occasion, then, for an issue? I see none, unless Congress, after most careful and mature consideration of the whole subject, is able to present a plan on which we can all honestly unite and as one phalanx move forward to victory.

I shall not be drawn into premature discussion of the scheme presented by the report of the Committee on Reconstruction. I speak now to the question of time only. I am sure that report could not have been made in the last week of March. I am equally sure, that, if it had been postponed until the last week of May, they would have made a better one than they made in the last week of April. I hope, therefore, that the decision of this question will be postponed as long as possible, in order that all just influences may come to Congress from the country, and that Congress itself may be inspired by the fullest and amplest consideration of the whole question.

There is the evidence before this Committee, — we have not yet seen it together. That evidence ought to be together; it ought to be before the whole country; and we should have returning to us from the country the just influence which its circulation is calculated to produce. I am sure, that, wherever that evidence is read, the people will say, Congress is justified

in insisting upon security for the future. For that purpose I presume the evidence was taken; and I hope Congress will not act until the natural and legitimate influences from the evidence are felt in their counsels.

Allow me to say, by way of comment on the proposition of the Senator from Connecticut, that it seems to me my excellent friend, in bringing it forward, forgot two things.

Mr. Dixon. Probably more than that.

Mr. Sumner. But two things he forgot were so great, so essential, that to forget them was to forget everything. In the first place, he forgot that we had been in a war; and, in the second place, he forgot that four million human beings had been changed from a condition of slavery to freedom. Those two ruling facts my excellent friend forgot, evidently, when he drew his proposition. Plainly, he forgot that we had been in a war, because he fails to make any provision for that security which common sense and common prudence, the Law of Nations and every instinct of the human heart, require should be made. He provides no guaranty. Sir, the essential thing, at this moment, is a guaranty. The Senator abandons that. If, like the Senator, I could forget this terrible war, with all the blood and treasure it has cost, I, too, could be indifferent to security for the future; but as that war is always in my mind, the Senator will pardon me, if I insist upon guaranties.

I have said that my excellent friend forgets that four million human beings have been changed in their condition. Four million slaves have been declared freemen. By whom, and by what power? By the

National Government. And let me say, that, as the National Government gave that freedom, the National Government must secure it. The National Government cannot leave the men it has made free to the guardianship or custody or tender mercies of any other government. It is bound to take them into its own keeping, to surround them with its own protecting power, and invest them with all the rights and conditions which, in the exercise of its best judgment, seem necessary to that end. All that the Senator has forgotten. It is not in his mind. If I could bring myself to such obliviousness, if I could bathe so completely in the waters of Lethe as my excellent friend from Connecticut seems to have done daily in these recent times, I might, perhaps, join in the support of his proposition.

THE EMPEROR OF RUSSIA AND EMANCIPATION.

Remarks on a Joint Resolution relative to Attempted Assassination of the Emperor, May 8, 1866.

A joint resolution "relative to the attempted assassination of the Emperor of Russia," introduced in the House of Representatives by Hon. Thaddeus Stevens, passed that body, and in the Senate was referred to the Committee on Foreign Relations.

May 8th, it was reported to the Senate slightly amended, so as to read: —

"*Resolved, &c.*, That the Congress of the United States of America has learned with deep regret of the attempt made upon the life of the Emperor of Russia by an enemy of Emancipation. The Congress sends greeting to his Imperial Majesty and to the Russian nation, and congratulates the twenty million serfs upon the providential escape from danger of the sovereign to whose head and heart they owe the blessings of their freedom."

Mr. Sumner, on reporting it, said, that, as it was a resolution which would interest the Senate, and as perhaps it ought to be acted upon immediately and unanimously, he would ask that it be proceeded with at once. There being no objection, he explained it briefly.

MR. PRESIDENT, — This resolution seems scarcely adequate to the occasion, but the Committee was content with making the few slight amendments already approved by the Senate, without interfering further with the idea or language adopted by the other House, where the resolution originated.

From the public prints we learn that an attempt has been made on the life of the Emperor of Russia by an

assassin, — maddened against him, so it is said, on account of his divine effort to establish Emancipation. Of these things I know nothing beyond the report open to all; but I am not unacquainted with the generous efforts of the Emperor, and the opposition, if not animosity, aroused by his perseverance in completing the good work.

In urging our own duties, I have more than once referred to this shining example.[1] The decree of Emancipation, in February, 1861, has been supplemented by an elaborate system of regulations, where Human Liberty is crowned by the safeguards of a true civilization, including protection to what are styled civil rights, especially rights in court, — then rights of property, with a homestead for every emancipated serf, — then rights of public education; and added to these were political rights, with the right to vote for local officers, corresponding to our officers for town and county: all of which, though just and practical, have encountered obstacles easily appreciated by us, who are in a similar transition period. The very thoroughness with which the Emperor is carrying out Emancipation has aroused the adversaries of reform, and I think it not improbable that it was one of these who aimed the blow so happily arrested. The laggard and dull are not pursued by assassins.

The Emperor of Russia was born in 1818, and is now forty-eight years of age. He succeeded to the imperial throne in 1855. At once, on his accession, he was inspired to accomplish Emancipation in his extended empire, stretching from the Baltic to the Sea of Kamt-

[1] *Ante*, Vol. XII. pp. 312–314; Vol. XIII. pp. 57–60.

chatka. One of his earliest declarations signalized his character: he would have this great work begin from above, anxious that it should not proceed from below. Therefore he insisted that the imperial government should undertake it, and not leave the blessed change to the chance of insurrection and blood. He went forward bravely, encountering opposition; and now that the decree of Emancipation has gone forth, he still goes forward to assure all those rights without which Emancipation, I fear, is little more than a name. Our country does well, when it offers sincere homage to the illustrious liberator who has attempted so great a task, and at such hazard, making a landmark of civilization.

Mr. Saulsbury, of Delaware, moved to amend the resolution by striking out the words "by an enemy of Emancipation," and advocated his amendment in a speech. Mr. Sumner replied, that it was impossible for the Senate to ascertain through a commission the precise facts in the case, — that it was an historic case, to be determined by historic evidence, — that the same testimony or report from which we learned the attempt to take the life of the Emperor disclosed also the character of the assassin, — and that doubtless the House of Representatives, from which the resolution came, acted on this authority. The amendment was rejected, and the resolution was passed without a division.

Hon. Gustavus V. Fox, Assistant Secretary of the Navy, was sent to Russia in the ironclad Miantonomoh, charged with the communication of this resolution to the Emperor. He was received with much distinction and hospitality. The visit was subsequently described in a work entitled "Narrative of the Mission to Russia, in 1866, of the Hon. Gustavus Vasa Fox, Assistant Secretary of the Navy, from the Journal and Notes of J. F. Loubat, edited by John D. Champlin, Jr., 1873." The mission was entertained brilliantly by Prince Galitzin at Moscow, August 26th (14th), and it is said that "among the invited guests at the dinner was the emancipated serf, Gvozdeff, the mayor of the commune." [1]

[1] Narrative, p. 265.

POWER OF CONGRESS TO PROVIDE AGAINST CHOLERA FROM ABROAD.

Speeches in the Senate, on a Joint Resolution to prevent the Introduction of Cholera into the Ports of the United States, May 9, 11, and 15, 1866.

May 9th, the Senate having under consideration a joint resolution, which had passed the House of Representatives, to prevent the introduction of cholera into the ports of the United States, Mr. Sumner said: —

MR. PRESIDENT, — I must say, that, reflecting upon this question, I find that I travelled with my friend from Maine [Mr. Morrill] through his inquiries and his doubts, but it was only to arrive substantially at the conclusion of my friend from Vermont [Mr. Edmunds]. I thought that the criticism of my friend from Maine was in many respects, at least on its face, just. I went along with him, and yet I hesitated in adopting the conclusion he seemed to intimate. I doubt, if we proceed under the House resolution, whether we shall do the work thoroughly. I doubt whether that resolution can be made sufficiently effective. Indeed, I may go further, and say I am satisfied that it will not be efficient for the occasion. We then have the substitute proposed by our own Committee. Against that there is certainly the remark to be made, that it is novel. I am not aware that any

such proposition has ever before been brought forward; but certainly it has in its favor the great argument of efficiency. Yet the question remains behind, to which the Senator from Maine has directed attention, — whether this proposition is not something more than even a novelty, — whether it is not a departure from just principles. I am not inclined to say that it is anything more than a novelty. I admit that it is such. It does invest the Government with large and perhaps unprecedented powers, in order to meet a peculiar case, where a stringent remedy must be applied.

But, as the Chairman of the Committee on Commerce suggests, the powers are temporary. I am not ready to say that such powers cannot be intrusted to the Government. I believe they can be. But while I agree in that, and am ready to vote accordingly, yet I should like to know from the Chairman why these powers are to be placed under the direction of the Secretary of War rather than of the Secretary of the Treasury.

Mr. Chandler, of Michigan, the Chairman, said that they were placed jointly in three Secretaries, the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury. After briefly considering this organization, Mr. Sumner proceeded further.

May 11th, Mr. Sumner spoke again.

I SHOULD not say anything now, but for the remarks of my friend from New York [Mr. HARRIS], who seemed at a loss where to find the power it is proposed to exercise. He was so much at a loss that he went beyond the bounds he usually prescribes for himself in this Chamber, and indulged in unwonted

jocularity. Not content with showing, as he supposed, that the power did not exist where it was said to exist, he asked, with ludicrous face, whether it was not found under the clause to guaranty a republican form of government. I am very glad to find that my excellent friend is looking to that clause of the Constitution. It is a clause very much neglected, but to my mind one of the most potent in the whole Constitution, — full of beneficent power, which it would be well, if the Government, at this crisis of its history, were disposed to exercise. Here are waters of healing for our distressed country. Follow this text in its natural and obvious requirements, and you will have security, peace, and liberty under the safeguard of that great guaranty, the Equal Rights of All.

But I must remind my friend that there is no occasion for any resort to this transcendent source of power at the present moment. The power from which this resolution is derived seems very obvious. My friend interrupts me to say that it is the war power. I say it is very obvious, and I will show him in a moment, that it is not the war power. It is a power that has been exercised constantly, from the beginning of our history, with regard to which there can be no question, — because it is embodied in one of the clearest texts of the National Constitution, — because it has been expounded by a series of decisions from our Supreme Court, which are among the most authoritative in our history. It is the power to regulate commerce. My friend smiles; but would he smile at the Constitution of his country?

"The Congress shall have power to regulate commerce with foreign nations and among the several States."

By the present resolution it is clearly proposed to regulate commerce with foreign nations. Have not all regulations with regard to passengers been under this power? Have they not all been to regulate commerce with foreign nations? Can there be any doubt? Is it not as plain as language can make it? Why, Sir, ever since I have been in Congress we have had annual bills for the regulation of passengers coming into our ports, — bills of different degrees of stringency, laying one penalty here and another penalty there, all in the execution of this unquestionable power.

Mr. Grimes. Will the Senator be kind enough to look at the second clause of the amended proposition, where it says, —

"That he" —

that is, the Secretary of War —

"shall also enforce the establishment of sanitary cordons to prevent the spread of said disease from infected districts adjacent to or within the limits of the United States": —

not confining it to the lines between the States, but giving him authority to establish cordons within the jurisdiction of a State. I should like to know where the Constitution authorizes such a thing as that.

Mr. Sumner. I am obliged to my friend even for interrupting me to call attention to that section, though he will pardon me, if I do not answer him at this moment, but when I come to that part of the resolution.

Mr. Grimes. Any time will do, so that we get it.

Mr. Sumner. You will have it all.

I am dwelling now on the power derived from the positive text of the Constitution to regulate commerce with foreign nations. I say, that, in the execution of

that power, we have undertaken to apply all manner of restrictions and regulations to the transportation of passengers. We have gone so far as to provide for the quantity of water on board each ship in proportion to every passenger. We have subjected every ship to regulations while at sea, and again to other regulations after arriving in port. The exercise of the power is by practice placed absolutely beyond question. Then it is intrenched in the very best judicial decisions of our country. I submit that no person can raise a question with regard to it.

MR. MORRILL. About regulating the importation of passengers from foreign countries nobody raises a question or a doubt. This is a question of quarantine, in its character police. Is there any precedent in the history of the United States where that power has been exercised by the General Government?

MR. SUMNER. I am very glad the Senator presses that question. I meet it. Does the Senator mean to suggest that the same power that can reach the sea, and determine even the quantity of water in the hold for each passenger, cannot apply the minutest possible regulation when that same ship arrives in the harbor?

MR. MORRILL. Will my friend allow me to answer him right there?

MR. SUMNER. Certainly.

MR. MORRILL. I maintain, that, when the passenger is landed, and comes within the limits and jurisdiction of the State, and within its police power, the commercial power of the Government ceases at that point, and the treatment of the passenger thereafter is within the police power of the State exclusively.

MR. SUMNER. I think the Senator goes beyond the decision of the Supreme Court. He overrules that decision.

MR. MORRILL. I am precisely on a line with the License cases, in which the principle was applied to the importation of liquors.

MR. SUMNER. At a certain stage, I admit, the police power of the State may intervene; but I do nevertheless insist, as beyond question, that the power of the United States is complete over every passenger vessel arriving in the harbor, so that it may be subjected to any regulations in the discretion of Congress for the public good with reference to passengers. Of course, this discretion is to be exercised wisely for the public good, that the public health may not suffer. Strange, if the National Government, which is our guardian against foreign foes, may not protect us against this fearful enemy.

MR. MORRILL. I do not deny that; I agree to that.

MR. SUMNER. Very well.

MR. MORRILL. Now my query is, Can the power of commerce, that power which regulates the passengers on their passage to this country, follow the passengers entirely into the States and overrule the internal police of the States? That is the question.

MR. SUMNER. The Senator puts a question running into that already propounded by the Senator from Iowa, and to which I was coming in due course of time. I have already arrived at it. I was illustrating the power that the Government would have in the harbor; and now let me give another illustration, familiar to my friend: it is with reference to goods. I need not remind the Senator, that, when goods arrive, subject to duties, the custom-house exercises its control, accord-

ing to the prescription of law, not only while the goods are water-borne, but after they have been landed; and if they have been landed in violation of the law, it pursues them even into the interior.

Mr. Chandler. To the Rocky Mountains.

Mr. Sumner. It is enough to say that it pursues them into the interior. The National Constitution was not so absurd, nor have our courts been so absurd in its interpretation, as to recognize a power in the custom-house merely at the door of the granite structure, and to require that it shall stop there. No, Sir: the power must be made effective. We have made it effective with reference to goods. We have also, to a certain extent, made it effective, through decisions of the Supreme Court, with reference to passengers. It remains that we should carry it one stage further, and, for the public weal, and to secure the public health, which is a large part of the public weal, insist that this same power shall be invoked as in the pursuit of goods. I cannot see the difference between the two cases. I cannot doubt that the power over goods imported at our custom-house under Acts of Congress and the power over passengers introduced into this country under Acts of Congress are both derived from the same source, and you can find no limitation for one and no expansion for one which is not equally applicable to the other. I insist, therefore, that on this simple text you find ample power. You must annul the text, or at least limit it by construction and dwarf its fair proportions, or the power of Congress to provide against cholera is perfect.

But as Senators have such scruples about the second clause of the resolution, —

"That he shall also enforce the establishment of sanitary cordons to prevent the spread of said disease from infected districts adjacent to or within the limits of the United States," —

I will add, this clause may be treated under two different heads, — first, as ancillary, from the nature of the case, to the power under the clause to regulate commerce with foreign nations. From the nature of the case, if you have the power to shut out cholera from the ports, you must be intrusted with an associate power to follow this same enemy even into the interior, precisely as you follow goods escaping the exercise of your power in the ports. I am willing, therefore, to put it even on the first clause of the constitutional provision, calling it simply ancillary. But I do not stop there; for, associated with this clause, and constituting part of the provision, are the words, "and among the several States." Congress has power to regulate commerce among the several States. Now, Sir, assuming that commerce is, as described or defined by our Supreme Court, intercourse among men, embracing the transportation, not only of goods, but of passengers, and applicable to everything that comes under the comprehensive term "intercourse," — giving to it that expansive definition which I think you will find in the decisions of the Supreme Court, I ask you if there is not under that second clause ample power also to regulate this matter. Congress has power to regulate commerce, communication, intercourse, transportation of freight and transportation of passengers among the several States. To make that effective, you must concede a power such as appears in the clause to which the Senator from Iowa has directed my atten-

tion. There is no reference here to State lines; and why? From the necessity of the case. The disease itself does not recognize State lines. The authority which goes forth to meet the disease must be at least on an equality with the disease, and can recognize no State lines. How vain to set up State rights as an impediment to this beneficent power!

I therefore conclude that the power over this subject is plenary, whether you look at the first clause of the Constitution to which I have called attention, relating to foreign commerce, or the second clause, relating to commerce among the States. It is full; it is complete. Hence I put aside the constitutional objection, whether used seriously or jocosely, as it was perhaps by my friend from New York; I put it aside as absolutely out of the question and irrelevant. Congress has ample power over this whole subject. And, Sir, permit me to ask, if it had not ample power over it, where should we be as a government at this time? Can we confess that a great government of the world must fold its arms, and see a foreign enemy — for such it is — crossing the sea and invading our shores, yet we unable to meet it? I do not believe that this transcendent republic is thus imbecile. I believe, that, under the text of the National Constitution, as well as from the nature of the case, it has ample powers to meet such enemy.

And this brings me, Sir, to the proposed amendment of the Senator from Vermont [Mr. EDMUNDS]. He moves to strike out the clause to which I called attention the other day, and to substitute certain words creating a commission. I objected to this clause the other day; I will read it now: —

"That it shall be the duty of the Secretary of War, with the coöperation of the Secretary of the Navy and the Secretary of the Treasury, whose concurrent action shall be directed by the Commander-in-Chief of the Army and Navy, to adopt an efficient and uniform system of quarantine against the introduction into this country of the Asiatic cholera."

I objected, it may be remembered, to this clause, as placing the bill under the patronage of the war power. I did not think it needed that patronage, though I was willing to admit that it might need sometimes the exercise of the war authority; but I did not think it needed to be derived from the war power. It was not from the nature of the case an exercise of this power, but it was clearly derived from the power over the commerce of the country; and I regretted, therefore, that the framers of the bill had seemed to put the war power in the forefront. The Senator from Vermont meets that suggestion by an amendment to the effect that a commission shall be constituted, embracing the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury. I have no particular criticism to make upon the amendment. If the Senate consent to it, I shall certainly be disposed to join. But I think a better form still may be adopted, and one placing what we do more completely and unreservedly under that power of the Constitution from which I think it is derived, — that is, the power to regulate commerce. I would therefore propose that the duty shall be confided primarily to the Secretary of the Treasury, who, in the exercise of his powers, shall be aided by the Secretary of War and the Secretary of the Navy, under the direction of the President of the United States.

. . . . . .

In making this change, we shall simply enlarge and expand the existing powers of the Secretary of the Treasury. He is now the head of the custom-house; he regulates the passenger system. Go further, and give him these additional powers, that shall enable him, so far as he can, to prevent the introduction of disease into the country. All that we do will be in harmony with the practice of the Government, and I believe above question. The Government, in the exercise of admitted powers, will be, I trust, more than a match for the cholera.

May 15th, Mr. Reverdy Johnson replied, when Mr. Sumner rejoined: —

THE Senator from Maryland has referred us to the decisions of the Supreme Court which in his opinion bear directly on this point; but, Sir, with the ingenuity of a practised lawyer, he has omitted to remind us of that decision which, perhaps, of all others, is the most applicable. With the permission of the Senate, I will make up for the deficiency of the learned Senator, or at least endeavor to do so. I refer to the case of *The United States* v. *Coombs*, in the twelfth volume of Peters's Reports. There you will find one of the able and well-considered judgments of the late Mr. Justice Story, particularly treating this question. By "this question" I mean the power of Congress under the National Constitution to regulate commerce with foreign nations and among the several States. I will read a passage from his judgment, page 78: —

"The power to regulate commerce includes the power to regulate navigation, as connected with the commerce with

foreign nations and among the States. It was so held and decided by this court, after the most deliberate consideration, in the case of *Gibbons* v. *Ogden*, 9 Wheaton, 189 to 198."

All that the Senator will of course recognize; for, indeed, he has admitted as much in what he has said and cited. The learned judge then proceeds: —

"It does not stop at the mere boundary-line of a State; nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. It extends to such acts, done on land, which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the States. Any offence which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers."

Those are the pointed words of Mr. Justice Story.

Mr. Morrill. Will the Senator allow me to ask him a question?

Mr. Sumner. Certainly.

Mr. Morrill. That is, to regulate commerce.

Mr. Sumner. To regulate commerce.

Mr. Morrill. Does the Senator mean to be understood that a regulation in regard to cholera, a disease, is a regulation of commerce?

Mr. Sumner. I do, certainly.

Mr. Morrill. Then the cholera is commerce?

Mr. Sumner. No; cholera is not commerce, but cholera comes from passengers.

Mr. Morrill. Then is the regulation of it commerce, or

is it the treatment of a disease? Is it a regulation of health, or a regulation of commerce?

MR. SUMNER. It is connected with commerce, and must be treated in its appropriate connection.

. . . . . .

Nor do I understand that this is an exercise of power for the first time. It is nothing more than a new application of an old power, or an expansion of an old power to a new condition of circumstances, and perhaps I may say enlarging the old power, because the circumstances require the enlargement. I do not understand that any new fountain is opened. No new source is drawn upon; no new principle is invoked. We go back to the original text so often applied in kindred cases, and insist upon its application now.

If I understand the argument of the Senator, it is that all quarantine regulations belong to the States exclusively. Am I right in that?

MR. MORRILL. Most of them.

MR. SUMNER. The Senator, I understand, says they belong exclusively to the States.

MR. MORRILL. Yes.

MR. SUMNER. If I carry the idea of the Senator still further, it would be to say that the Government of the United States might make all possible regulations with reference to passengers water-borne, but could not touch them with any sanitary regulation the moment they entered our harbors. Such is the inevitable conclusion; and permit me to say, it is an absurdity. I will not consent thus to despoil the National Government of a power which to my mind seems so essential to the national health.

After quoting the statute of February 25, 1799, entitled "An Act respecting Quarantines and Health Laws," by which United States officers are directed to assist State officers in enforcing the quarantine, Mr. Sumner proceeded: —

Now I submit that this statute of 1799 relating to quarantine contains a jumble or confusion not unlike that in the Fugitive Slave Act of 1793, — that is, a recognition of a concurrent jurisdiction in the State and National Governments over this question. The measure now before the Senate would follow out the general principle or reasoning of later years, and assure the jurisdiction to the Federal, or, as I always like to call it, the National power. It would secure it to the National power; and to my mind it properly belongs to the National power, and no ingenuity of the Senator from Maine can satisfy me that it should not be intrusted to the National power. It is essentially a National object, and can be performed effectively and thoroughly only through the National arm. If you intrust it to the different local authorities, you will have as many systems as you have States or communities, and you cannot bring your policy to bear with that unity which it ought to have in dealing with so deadly a foe. You should be able to carry into this business something of the combination and directness of war. At the same time I beg to say, as I have heretofore said, that I do not recognize this in any respect as a military remedy. I treat it absolutely as commercial; I derive it from a commercial power; and by the amendment which I have introduced I would place it under the direction of the Secretary of the Treasury.

The amendment of Mr. Sumner was agreed to without a division. The substitute of the Committee, thus amended, was lost, — Yeas 17,

Nays 19. The original House resolution was then amended in conformity with Mr. Sumner's amendment, by inserting "Secretary of the Treasury" instead of "President," and passed, — Yeas 27, Nays 12, — and afterwards approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 357.

RANK OF DIPLOMATIC REPRESENTATIVES ABROAD.

Speeches in the Senate, on an Amendment to the Consular and Diplomatic Bill, authorizing Envoys Extraordinary and Ministers Plenipotentiary instead of Ministers Resident, May 16 and 17, 1866.

May 16th, the Senate having under consideration the bill making appropriations for the consular and diplomatic expenses for the ensuing year, Mr. Sumner moved the following amendment: —

"*Provided*, That an envoy extraordinary and minister plenipotentiary appointed at any place where the United States are now represented by a minister resident shall receive the compensation fixed by law and appropriated for a minister resident, and no more."

Mr. Sumner then said: —

I SHOULD like to make a brief explanation of this amendment. It will be perceived that it comes after the appropriation for salaries of envoys extraordinary and ministers plenipotentiary and ministers resident. Its object, in one word, is to authorize the Government, in its discretion, to employ persons with the title of envoy extraordinary and minister plenipotentiary where it now employs ministers resident, but without any increase of salary. This subject has occupied the attention of the Committee on Foreign Relations for several years; it has been more than once before the Senate. The Committee were unanimous that

the good of the service, especially in Europe, required this change. From authentic information it appears that our ministers at courts where they have only the title of ministers resident play a second part to gentlemen with the higher title, though representing governments which we should not consider in worldly rank on an equality with ours. They are second to them; in short, to use a familiar illustration, and simply to bring the difference home, when they call upon business or appear anywhere, they bear the same relation to the envoys extraordinary of those smaller governments that a member of the other House, calling upon the President, bears to Senators. The Senator is admitted, when the member of the other House, as we know, waits.

I hold in my hand the last Almanac of Gotha, for 1866, which is the diplomatic authority for the world, and has been for a century; and, by way of example, I turn to the diplomatic list for the Netherlands, where, it will be remembered, we are represented by a patriotic citizen, well known to most of us, who was once connected with the press, — Mr. Pike, — with the title of minister resident. According to the list, I find at this same court the Grand Duchy of Baden represented by an envoy extraordinary and minister plenipotentiary; Belgium, the adjoining country, and with a population much inferior to our own, represented by an envoy extraordinary and minister plenipotentiary; Denmark, a nation which, shorn of the two provinces of Schleswig and Holstein, has little more than a million and a half of population, represented by an envoy extraordinary and minister plenipotentiary. Spain, of course, is represented by an envoy extraordinary and

minister plenipotentiary. Even the Grand Duchy of Hesse is so represented; so is the kingdom of Italy; so is the Duchy of Nassau; so is Portugal; so is Prussia; and so others. In transacting business, the American minister resident at this court is always treated as second to these representatives. I have alluded to the relations we bear to the head of the Executive Department here, as compared with members of the other House. I doubt not that Senators know there is a positive business advantage in having access promptly, and perhaps with a certain consideration which does not always attach to those of inferior rank.

. . . . .

It will be observed that the proposition does not undertake to empower the President, or to direct him, to make this change; but it assumes, according to a certain theory of the Constitution, that under the Constitution it is in the discretion of the President to send ambassadors, envoys extraordinary, or ministers resident, or any other diplomatic functionary, in his discretion, Congress having only the function of supplying the means.

. . . . .

Now the proposition which I have moved proceeds, in harmony with this, simply to declare, that, if the President shall undertake to appoint an envoy extraordinary and minister plenipotentiary to any court where we are now represented by a minister resident, the salary shall be only that of a minister resident. Proceeding with the theory of this Act and a certain theory of the Constitution, the President has the power already to appoint an envoy extraordinary and minister plenipotentiary to any of these courts, if in his discretion

he shall see fit; but there is no salary appropriated by law. If the amendment now offered should be adopted, it would be in his discretion to change our representative from a minister resident to an envoy extraordinary, but without increase of salary; and the simple question remains, whether this enabling discretion is not proper. The President is not called upon to exercise it. There are places where he may think it better to continue the minister resident.

Mr. Fessenden. He can do it now.

Mr. Sumner. But there is no salary; the salary would not apply. The amendment is to supply the salary in such cases; that is all. I have heard it observed, that, though the President may now, under the Constitution, appoint to any place an envoy extraordinary and minister plenipotentiary, he is restrained in the exercise of that power by the want of an appropriation to support the appointment. The present proposition meets that difficulty precisely.

The amendment was opposed by Mr. Fessenden, of Maine, and Mr. Grimes, of Iowa. Mr. Sumner replied: —

I HAVE no feeling on this question at all, — not the least; nor do I approach it as a political question. I see no individual in it. I do not see Mr. Harvey or Mr. Sanford. I see nobody here to oppose, and nobody to favor. I know nothing in it but my country and its service abroad. Sir, I think I am as sensitive as any other Senator with regard to the just influence belonging to my country as a republic great and glorious in the history of mankind. I believe that I am duly proud of it, and conscious of the weight it ought to carry

wherever it appears. I know its name stands for something in the world, and that whoever represents this country on the ocean or in the diplomatic service has, alone, a great and powerful recommendation. But I also know too much of human history and too much of human nature, not to know that men everywhere are influenced more or less by the title of those who approach them.

MR. FESSENDEN. Governments are not; men may be.

MR. SUMNER. But let me remind my friend that governments are composed of men. He knows well that the presence of a general on a particular service produces more certain effect and prompter result than the presence of a colonel or a major, at least under ordinary circumstances. My other friend, who represents the Naval Committee on this floor [Mr. GRIMES], knows very well, that, if he sends an admiral on any service, it may be only of compliment, he produces at once a greater effect than if he sends a lieutenant.

The Senator has just induced us to send the Assistant Secretary of the Navy to Europe, because in that way he might give more *éclat* to a certain service. I united with him in the effort. But why not allow a clerk of the Department to carry our resolution? The Senator knew full well, if he sent the Assistant Secretary of the Navy, he should do more than if he sent a simple clerk of the Department. And therefore I am brought to the precise point, that, whatever the rank of our country in the world, and how much soever we may be entitled, at all courts where our representatives are, to the highest precedence, yet, such is human nature, our position is impaired by the title of

the agent we send. I would give our agent the artificial accessories and incidents which the Law of Nations allows. I follow the Law of Nations. Why does this law authorize or sanction, and why do our Constitution and statutes, following the Law of Nations, authorize and sanction, a difference of rank, except to obtain corresponding degrees of influence? That is the theory which underlies the gradation of rank. It runs into the army; it runs into the navy; it runs into Congress; it runs into all the business of life; and the simple question is, whether now, in the diplomatic service of the country, in dealing with our foreign agents, we shall discard a principle of action followed in everything else.

The amendment was rejected, — Yeas 15, Nays 17.

May 17th, Mr. Sumner renewed his effort, by moving the amendment in the following form: —

"*And be it further enacted*, That the salary of any envoy extraordinary and minister plenipotentiary hereafter appointed shall be the salary of a minister resident, and nothing more, except when he is appointed to one of the countries where the United States are now represented by an envoy extraordinary and minister plenipotentiary."

After explaining it, Mr. Sumner said, especially in reply to Mr. Grimes: —

I DO not like to discuss things forever that have been discussed so often. I have said so much on this matter that I feel ashamed to add another word; and yet, as the Senator from Iowa returns to the assault, perhaps I should return to the defence.

I tried to show, last evening, that, in introducing this proposition, I was simply acting on the practice of the Government in other respects, and upon the practice of mankind generally, everywhere; and my friend from

Ohio [Mr. WADE] reminds me that the argument of the Senator from Iowa, a few days ago, was one of the strongest illustrations of what I said. He induced the Senate to agree to appoint a new Assistant Secretary of the Navy, merely to allow the actual Assistant Secretary to go abroad, because his presence would enhance the service. Under his argument, yielding to its pressure, we appointed a new functionary in the Department of the Navy.

Now, if I can have the attention of the Senator from Iowa for one moment, I would put him a practical question. If he had important business, say with the mayor of New York, which he wished to present in the best way possible, I have no doubt my friend would count naturally upon his own character, and justly; he would believe that any agent sent by him to the mayor of New York would be well received. Doubtless he would be well received; yet, if there were two persons whose services he might employ, one with the rank of general and the other with the rank of colonel, but equal in abilities and in fitness, I have no doubt my friend would select the general rather than the colonel. From familiarity with human nature, he knows that the general, on arrival, would have a prompter reception than the colonel. It is useless to say, in reply, that behind the agent is the same personage. I assume all that; but I would secure for that same personage the best reception possible, and the highest facilities for his representative. I would now secure the same thing for my country, and I believe — pardon me, if I introduce my own personal testimony — but I believe, according to such opportunities of observation as I have had, now running over a

considerable period of life, that the interests of the country would be promoted by this change. I believe that business would be facilitated, and opportunities of influence enhanced.

I make no allusion to topics playfully introduced into this discussion. It is a matter of comparative indifference what place a man may have at a dinner-table; but I do wish to secure facilities in business and respect for the representatives of my country to the largest degree possible.

The amendment was adopted, — Yeas 18, Nays 16.

OFFICE OF ASSISTANT SECRETARY OF STATE, AND MR. HUNTER.

Remarks in the Senate, on an Amendment to the Consular and Diplomatic Bill, creating the Office of Second Assistant Secretary of State, May 16 and 17, 1866.

May 16th, the Senate having under consideration the bill making appropriations for the consular and diplomatic expenses, Mr. Sumner moved an addition of twenty per cent. to the compensation allowed to the clerks of the State Department. A petition from the clerks was read. Mr. Sumner then said: —

I DO not know that there is any necessity for me to add anything. The petition speaks for itself. It states the whole case. But a word will not be out of place with regard to the gentleman who heads the petition, — Mr. Hunter. He is one of the oldest public servants now connected with the Government. He has been in the Department of State for more than thirty years. He may be called the living index to that Department; and I believe I do not err in saying that in our Blue Book of office there is no person whose integrity is more generally recognized. Placed in a position of especial trust, where all the foreign correspondence of the Government passes under his eye, that which comes and that which goes, I believe he has passed a life without blame. He has been in a position where, had his integrity been open to seduc-

tion, he might have been tempted. No human being imagines that he has ever yielded. He has discharged his very important trusts on a very humble salary. I think the Senator from Maine [Mr. FESSENDEN] knows him well enough to know that he has brought to those functions ability of a peculiar character. And now, in the decline of life, he finds himself with the small salary of a clerk, on which he can with difficulty subsist, — and yet all the time rendering these important services and discharging these considerable trusts, absorbed in the business of the office so that he takes it home with him nightly. It leaves with him in the evening and returns with him in the morning, and then it fills the long day. I think that such a public servant deserves recognition. I have for some time felt that his compensation was inadequate. I have thought that his salary ought to be raised; but, after consideration of the question in committee, and consultation with others, it was thought best to present the case in a general proposition such as I have now moved, being for the addition of twenty per cent. to the compensation of all the clerks in the Department. The argument for this is enforced in the petition from these gentlemen which has been read at the desk. I can see no objection to it, especially after what we have done for the clerks of the Treasury. Are not public servants at the State Department as worthy as public servants at the Treasury?

The debate showed the indisposition of Senators to any general addition to the compensation of the clerks of the State Department, but with recognition of the merits of Mr. Hunter.

May 17th, after conversation and discussion, Mr. Sumner changed his motion, so as to read: —

"*And be it further enacted*, That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a second Assistant Secretary of State in the Department of State, at an annual salary of $3,500, to commence on the first day of July, 1866; and the amount necessary to pay the same is hereby appropriated."

Mr. Sumner then said : —

A SENATOR near me says he will not vote for this amendment, unless I put in the name. It is perfectly well known that it is intended as an opportunity to appoint Mr. Hunter, and the authorities, I presume, will take notice. There is no need of inserting his name ; and the remark of the Senator is simply a criticism for an excuse. I hope the Senate will adopt the amendment without a division.

There was a division, and the amendment was adopted, — Yeas 18, Nays 17.

DELAY IN THE REMOVAL OF DISABILITIES.

LETTER TO AN APPLICANT, MAY, 1866.

THIS letter was originally published in a Southern paper, but without the date.

SENATE CHAMBER [May, 1866].

DEAR SIR, — I have your letter of the 19th in reference to the removal of your political disabilities.

I am not sure that the time has yet come to make exceptions to our general policy in individual cases. To do so would open the door to innumerable applications; and once open, it would be difficult to shut it.

I hope to meet such cases as yours by some general enactment; and as soon as the condition of the country will permit, I shall be the first to advocate the removal of all disabilities under which you labor at present.

Yours truly,

CHARLES SUMNER.

INTERRUPTION OF RIGHT OF PETITION.

Remarks in the Senate, on the Withdrawal of a Petition from Citizens of Virginia, May 24, 1866.

Mr. Trumbull, of Illinois, recently presented a petition from citizens of Augusta County, Virginia, which was duly referred, stating that the Union men in that locality were without protection from the local authorities, and asking that the military power be not withdrawn. The petition caused excitement in the neighborhood, accompanied by threats. Mr. Trumbull had asked to withdraw the petition and return it to the petitioners, "that they may protect themselves, as far as this will enable them to do so, against the accusations which have been brought upon them," and expressed his regret that he could not propose some measure for their protection.

Mr. Sumner said: —

MR. PRESIDENT, — I hope the Senate will not take this step without considering its importance. I do not mean to oppose it, but I would ask attention to what I may call its gravity. I am not aware that a petition has ever before been withdrawn on a motion like that now made. A petition once presented comes into the possession of the Senate; it passes into its files, and into the archives of the Capitol. We are about to make a precedent for the first time. I do not say that the occasion does not justify the precedent. I incline to agree with my friend from Illinois. We owe protection, so far as we can afford it, to these petitioners; and since the Senator from Illi-

nois regards this as the best way, I am disposed to follow him; but in doing it, I wish the Senate to take notice of the character of the step, and of the precedent they make.

But this is not all, Sir. I wish the Senate to take notice that they are called to adopt this exceptional precedent by the lawless and brutal condition of the social system about these petitioners. The very fact which the Senator brings to the attention of the Senate, and on account of which he invokes an unprecedented exercise of power, is important evidence on the condition of things in one of these Rebel States. It goes to show that they are not yet in any just sense reconstructed, or prepared for reconstruction. Such an abnormal fact could not occur in any other part of our broad country. That it occurs here must be referred to remains of Rebellion not yet subdued, but which you are now called upon, in the exercise of powers under the National Constitution, to overcome and obliterate.

Therefore, Sir, I regard this transaction in a double light: first, as an important precedent in the business of the Senate; secondly, as illustrating a condition of things to justify every exercise of care and diligence on our part, that it may not bring forth similar fruits hereafter. The right of petition, a great popular right, cannot be interrupted without a blow at the Constitution.

OFFICIAL HISTORY OF THE REBELLION.

Remarks in the Senate, on a Joint Resolution to provide for the Publication of the Official History of the Rebellion, May 24, 1866.

May 24th, on motion of Mr. Wilson, of Massachusetts, the Senate considered a joint resolution to provide for the publication of an official history of the Rebellion. In the debate that ensued, Mr. Sumner said: —

MR. PRESIDENT, — We have already in our history some experience by which we may be taught on this question. Senators have seen in their libraries, certainly in the Congressional Library, the large volumes known as "American Archives," of which there are portions of two series. When that collection was commenced, it was intended that it should embody all the papers, military and diplomatic, and also leading articles in newspapers, relating to the origin of our Revolution and the War of Independence. The collection proceeded to the year 1776, under the editorship of Peter Force, of this city, a gentleman as competent, I suppose, as any person who could have been selected in the whole country; but it was subject to the revising judgment of the Secretary of State. Finally, when Mr. Force had prepared a volume for 1777, and his papers were collected and laid before the Secretary of State, at that time Mr. Marcy, the latter functionary

refused his assent to any further publication, and the collection, originally ordered by Act of Congress,[1] was arrested at the year 1776, and primarily because the Secretary of State declined to give his final assent, as required under a subsequent Act.[2] Such is our experience with regard to one important portion of our history, the War of Independence. The documents are not yet published in one connected series; I do not know that they ever will be. And now, Sir, it is proposed to commence another series, promising more expense even than that of the War of Independence.

I would simply suggest that we may well consider whether it might not be advisable to complete the original series, and to illustrate the War of Independence, before we enter upon the work of illustrating this recent more terrible conflict. But, Sir, suppose we undertake the latter work; then I think all that has been said, particularly by the Senator from Maine [Mr. FESSENDEN], suggesting caution, care, and editorship, of infinite importance. I agree with that Senator absolutely, when he says the whole collection will be of very little value, it will be trivial, if not well edited, well arranged, and then well indexed.

MR. FESSENDEN. And the larger it is, the worse it will be.

MR. SUMNER. Of course. Then Senators say that we must find a competent man. Who is the competent man? I do not know him now. I dare say he might come to light, perhaps, if we went about with a lantern after him; but the competent man to gather

[1] Act, March 2, 1833: Statutes at Large, Vol. IV. p. 654.
[2] Act, March 3, 1843: Ibid., Vol. V. p. 641.

together all this mass of documents, to put them in order, and then to make a proper analytical index, would be a very rare character. He must be a man without the turbulent ambition that belongs to politicians, — disposed to quiet, willing to live at home with his books and papers, and give himself day and night to serious toil. That is the character of man you would require. I do not know where he could be found.

Mr. Johnson [of Maryland]. You might find him in Boston.

Mr. Sumner. In Boston, if anywhere, perhaps. [*Laughter.*] But I do not know him there, I am free to say.

Mr. Fessenden. Resign, and take charge of it yourself. [*Laughter.*]

Mr. Sumner. I do not know but that is the best thing I could do [*laughter*]; but then I should despair of getting through the work.

Mr. Fessenden. I would agree to serve as your clerk.

Mr. Sumner. Then the work would surely be done. [*Laughter.*]

All this brings us to the conclusion that what we do should be well considered and laid out in advance. I think, therefore, it is important that the resolution should be recommitted, that we should have the benefit of all the information we can obtain from the Department, and, if possible, provide in advance the method, the arrangement, and the way in which the collection should be indexed. As much should be done in advance as possible. Sir, we may derive instruction on this subject from what is doing in other nations. At this moment the French Emperor is publishing the writings of his uncle, the Emperor Napoleon. The

collection has already proceeded to nineteen or twenty quarto volumes, elaborately edited, the purpose being to bring together every scrap, military, diplomatic, or personal, which can be found proceeding from the First Napoleon. All is under special editorship. Some of the first men of France are a committee superintending it. If we undertake our work, I think we ought to do as well by it as the Emperor of France does by the writings of his uncle.

The joint resolution was recommitted to the Committee on Military Affairs and reported back with an amendment. It finally passed both Houses, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 369.

EQUAL RIGHTS A CONDITION OF RECONSTRUCTION.

AMENDMENT IN THE SENATE TO A RECONSTRUCTION BILL, MAY 29, 1866.

APRIL 30th, Mr. Fessenden, from the Joint Committee on Reconstruction, reported a bill "to provide for restoring to the States lately in insurrection their full political rights." There was no requirement of Equal Rights as a condition of Reconstruction.

May 29th, Mr. Sumner introduced the following amendment as a substitute for the first section of the bill: —

THAT, when any State lately in rebellion shall have ratified the foregoing Amendment, and shall have modified its constitution and laws in conformity therewith, and shall have further provided that there shall be no denial of the elective franchise to citizens of the United States because of race or color, and that all persons shall be equal before the law, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such: *Provided,* that nothing in this section shall be so construed as to require the disfranchisement of any loyal person who is now allowed to vote.

The bill was never called up after the printing of this amendment.

INTER-STATE INTERCOURSE BY RAILWAY.

Remarks in the Senate, on the Bill to facilitate Commercial, Postal, and Military Communication in the several States, May 29, 1866.

A measure relating to inter-State intercourse, especially by railway, which had been considered by a former Congress, reappeared in the present Congress. The bill of Mr. Sumner, "to facilitate commercial, postal, and military communication among the several States,"[1] was introduced into the House of Representatives and adopted, with a proviso touching stipulations between the United States and any railway company. In the Senate it was considered from time to time.

May 29th, the following additional proviso, moved by Mr. Clark, of New Hampshire, was adopted, — Yeas 24, Nays 15 : —

"Nor shall it be construed to authorize any railroad company to build any new road or connection with any other road, without authority from the State in which said railroad or connection may be proposed."

On the third reading of the bill, Mr. Sumner said : —

I AGREE with the Senator from Pennsylvania [Mr. Cowan], that the measure before us is important: whether so transcendently important as he depicts I do not venture to say. But, Sir, I believe it a beneficent measure, and important from its very beneficence.

The bill as originally presented was complete and simple. I think it met the idea so ably set forth by the Senator from Ohio [Mr. Sherman]. Were the bill

[1] See, *ante*, Vol. XII. p. 105.

adopted in that form, it would be truly beneficent. It would prevent any State from becoming a turnpike-gate to the internal commerce of the country.

No State, I insist, has a right to take toll on the internal commerce of this great republic, and it belongs to the United States, under the National Constitution, to regulate that internal commerce. It was in the exercise of that power, under the National Constitution, and also of other powers, as the power to regulate the post-office, and also the military power, that this bill was conceived. I say, Sir, in every respect it is beneficent. It has been to-day ably and conclusively vindicated by the Senator from Ohio. On other occasions I have considered it. I feel now that there is little occasion for any further elaborate discussion. I regret, Sir, with the Senator from Ohio, that the amendment of the Senator from New Hampshire has been fastened upon it. I wish it were in our power now to give the bill its original force and virtue. But, even with that amendment, it is better than nothing. It does something. It goes forth and does battle with a monopoly in at least one State of the Union which was in view when the bill was first presented. It is also a precedent for the future action of Congress, and it will open the way to what the Senator from Ohio so earnestly desires.

I shall be glad hereafter to act with him in carrying out the original purposes of this bill, so that no State shall be able to set itself in the way of the internal commerce of the country. But, considering that the amendment is already attached to the bill, that we have now passed the stage when it would be advisable to open the discussion again, I hope the Senate will

proceed to its final passage. Though shorn of some of its virtue, it is better than nothing; it will do much good. Even in its present form it is essentially beneficent. Therefore I hope it will be adopted.

The bill passed the Senate, — Yeas 22, Nays 19, — and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 66.

ATTITUDE OF JUSTICE TOWARDS ENGLAND.

Remarks in the Senate, on the Bill for the Relief of the Owners of the British Vessel Magicienne, June 26, 1866.

June 26th, on motion of Mr. Sumner, the Senate proceeded to consider the bill for the relief of the owners of the British vessel Magicienne. The bill directed the payment of $8,645 to these owners for damages from the wrongful seizure and detention of that vessel by the United States ship Onward, in January, 1863.

Mr. Sumner said : —

BEFORE the vote is taken, I desire that the Senate should understand the character of the bill. The Senate may have forgotten that a message of the President, bearing date April 4, 1866, communicated to the two Houses of Congress the correspondence between the Government of the United States and the Government of Great Britain relating to this vessel. By that correspondence it appears that the United States, through Mr. Seward, and the Government of Great Britain, through Lord Lyons, came to an agreement, in 1863, to refer the question of damages in this matter to Mr. Evarts, the eminent counsel at New York, and Mr. Archibald, the British consul at New York. Those two referees have proceeded with the business and made a report, which forms the basis of this bill. I call particular attention to the dates, as they had an

influence on the judgment of the Committee. I need not remind the Senate, that, at a later day, Lord Russell, in a formal manner, declined all arbitration of our claims on Great Britain. That was by a communication to Mr. Adams, our minister at Great Britain, bearing date August 30, 1865. All will remember the terms of that note, which have been substantially set forth in the annual message of the President. Had the case of this vessel arisen subsequently to the note, it would have been a grave question whether the Committee could have counselled any present recognition of the claim; but it was otherwise. The case occurred and the referees were selected before the note. Under the circumstances, there was no alternative. We had selected our court, and the damages were determined by the judgment of that court. It only remains for us to abide by the judgment of the tribunal we have assisted in establishing.

Mr. Conness, of California, said: —

"I have great confidence in the Committee on Foreign Relations. I know the sense of justice of that Committee, and of the Chairman of that Committee, and have great respect for it; but I cannot vote to pay any British claim in the face of the insulting response made by the British Government to the proposition even to consider American claims."

Mr. Sumner replied: —

I make no question with the Senator from California with regard to the reply of Lord Russell. . . . . I see that to pay the bill goes against the grain of the Senator; but I believe he, too, is not insensible to the claims of equity. While I have no doubt how the conduct of Great Britain with regard to our losses should be characterized, I am anxious that my own

country should be kept firm and constant in the attitude of justice.

The bill passed both Houses without a division, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 601.

POWER OF CONGRESS TO MAKE A SHIP-CANAL AT NIAGARA.

REMARKS IN THE SENATE, ON A BILL TO INCORPORATE THE NIAGARA SHIP-CANAL, JUNE 28, 1866.

JUNE 28th, the Senate took up a bill from the House to incorporate the Niagara Ship-Canal, and the first question was on the following amendment, reported by the Senate Committee on Commerce : —

"SECTION 28. *And be it further enacted*, That this Act shall not take effect, unless the Legislature of the State of New York shall within one year of the date hereof give its assent thereto."

In the debate that ensued, Mr. Sumner said : —

MR. PRESIDENT, — The Senator from Kentucky [Mr. GUTHRIE] gives his judgment in favor of the proposed ship-canal, but he gives his argument against it. He is in favor of delay, and the reason he assigns is, that the country is already encumbered by a large national debt, which we should not increase by any additional expenditure ; and he asks, with a triumphant air, whether it has ever before been proposed to reduce a national debt by increasing it. But his question does not meet the case. It is proposed, so far as I understand, to provide additional resources. To that end additional expenditure will be incurred. Out of the additional resources there will be increased

means for the payment of the national debt. This is the answer to the Senator; and as I understand him to make no other special objection to proceeding with the matter now, I feel that he is completely answered.

I confess, however, Sir, that what fell from the Senator from Iowa [Mr. GRIMES] produced more impression on my mind. His objection to the execution of this work by a corporation, and to allowing that corporation to establish tolls which the people of his State and of other States at the West should be obliged to pay, certainly deserves attention.

MR. SHERMAN. And there is the water power.

MR. SUMNER. Which is to be given to this corporation. I say it deserves attention. But I think the Senator is mistaken, when on that account he interposes the dilatory motion asking the bill recommitted. I do not know that at a subsequent stage of the debate it may not be important to recommit it; but I believe that at this moment we had better proceed with the bill, and have a vote of the Senate on the amendment reported by the Committee. For one, I wish an opportunity, and the sooner the better, to vote against that amendment. Senators about me say, so do they. Let us, then, proceed with the bill; and I hope the Senate will vote down the amendment which is to invite the consent and coöperation of the State of New York. On that question the Senate should establish a precedent.

The time has come for us to assert the powers of the National Government, independent of the States, in certain cases. The argument in this debate has

gone very much on the military power of the Government, little allusion being made to that other source of power which seems to me so ample, — the power to regulate commerce among the States. I prefer to found this power upon that text of the National Constitution. I ask Congress to interpose its power to regulate commerce among the States, — to interpose it on a great occasion, under circumstances, I admit, of special responsibility, when I consider the time and the occasion, but under circumstances which amply justify the exercise of the power. Who, Sir, can doubt, that, under these special words of the National Constitution, we have full power over this whole question? Who can doubt, that, without asking consent of New York, we may establish a canal about the Falls of Niagara? I am at a loss to understand how any Senator can hesitate as to the power of Congress.

Assuming, then, that Congress has the power, the only remaining question is as to the expediency of exercising it at this time; and that again brings me to the argument of the Senator from Kentucky, that at this time, when we are involved in a large national debt, we should not undertake to increase it. But to this I have already replied.

I hope, Sir, there will be no delay, — that the Senate will proceed with the bill at once. The question is great; it is important; it is almost historical; it is nothing less than to determine whether the northern shores of Ohio and Illinois shall be brought forward to the ocean itself, so that the large towns there shall become ports of the sea. By this ship-canal Chicago and Cleveland may be made harbors on the Atlantic coast. Sir, that is an object well worthy of an honest

ambition, and I ask the Senate without delay to do what it can for the great result.

After debate, the bill was postponed to the second Tuesday of December. Though considered at the next session, there was no final action upon it.

HONOR TO A CONSTANT UNION-MAN OF SOUTH CAROLINA.

REMARKS IN THE SENATE, ON A JOINT RESOLUTION TO AUTHORIZE THE PURCHASE FOR CONGRESS OF THE LAW LIBRARY OF THE LATE JAMES L. PETTIGRU, OF SOUTH CAROLINA, JULY 3, 1866.

JULY 3d, the Senate having under consideration a joint resolution, reported by the Library Committee, appropriating five thousand dollars for the purchase of the law library of the late James L. Pettigru, of South Carolina, Mr. Sumner said: —

I SEE no objection to this proposition on grounds of constitutional power. I cannot doubt the power. Had I been called to vote, when under consideration some weeks ago, I should have voted in the negative. I was disposed at that time to look at the purchase simply as a question of economy. Since then I have been led to regard it in that other aspect presented by the Senator from Wisconsin [Mr. HOWE], and I hesitate to vote against it.

I have gone over the catalogue of the library. It is a respectable library for a practising lawyer. Some of the books are valuable, others may be useful as duplicates.

But in voting this sum I do not expect an equivalent in the books. I would make the purchase an occasion of expressing sympathy with courage and fidelity under peculiar difficulties in the cause of our country.

Mr. Pettigru was like the angel Abdiel, "among the faithless faithful only he." In the State of South Carolina, and in Charleston itself, he continued true to the Union in all its trials, early and late, — first, in those days when it was menaced by Nullification, and then again when it was openly assailed by bloody Rebellion. He died in virtuous poverty, and I am willing that Congress should make this contribution to his widow. Such a character is an example of infinite value to the Republic. I wish to show my respect for it. I should be glad to see it exalted so as to be seen by men. In the deserts of the East a fountain is always cherished as a sacred spot; such a character was a fountain in the desert. What desert more complete than South Carolina?

The joint resolution passed both Houses, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 365.

OPEN VOTING IN THE ELECTION OF SENATORS; SECRET VOTING AT POPULAR ELECTIONS.

Speech in the Senate, on the Bill concerning the Election of Senators, July 11, 1866.

The case of Senator Stockton, and the questions which then arose with regard to the election of Senators, suggested the necessity of legislation by Congress on this subject. Accordingly a bill was reported from the Judiciary Committee, "to regulate the times and manner of holding elections for Senators in Congress."

July 11th, Mr. Fessenden, of Maine, moved an amendment to the bill, allowing every Legislature to settle the manner of voting, whether *viva voce* or by ballot. In the debate that ensued, Mr. Sumner said: —

MR. PRESIDENT, — I was impressed by a remark of the Senator from Illinois [Mr. Trumbull], to the effect, that, while regulating the election of Senators, it would be well to require uniformity in all respects. I was impressed by the remark, for it seemed to me a key to this whole question. If it be of importance to require uniformity in all respects, then it seems to me we should not fail to prescribe in all respects the manner of the election. Nothing should be left uncertain. This, I understand, the bill before us undertakes to do. The amendment of the Senator from Maine, if adopted, would leave the manner of election in one important particular open to the caprice of each Legisla-

ture, so that one Legislature might act in one way and another in another way, — one might choose Senators by open vote, and another by secret vote.

Now, Sir, I remark, in the first place, that there should be uniformity. The question, then, is, Which system shall be adopted, — open voting, or secret voting? While I am entirely satisfied that at popular elections secret voting is preferable, and that every citizen, when about to vote at any such election, has a right to the protection of secrecy, I do not see my way to the same conclusion with regard to votes in a representative capacity. Such votes do not belong to the individual, if I may so express myself, but to his constituents. A sound policy requires that the constituent should be able to see the vote given by the representative; but that can be only where it is open. This argument seems to me unanswerable in principle.

Reference has been made to the English system; and I am glad to adduce it for example, not in the election of members of Parliament, but in elections by Parliament itself, as in the choice of Speaker. According to the principle I have already stated, elections for members of Parliament should enjoy the protection of secrecy, which they do not, while the representative in Parliament should be held to vote in such a way that his constituents may know what he does, and this is the English rule. The Speaker of the House of Commons is chosen by open voting, or *viva voce*.

Mr. Fessenden. We do not do it here in the election of a President of the Senate.

Mr. Sumner. But I am disposed to believe that in not doing it we fail to follow the best example. There

is no question now with regard to the manner of voting at popular elections. Our present question concerns the manner of voting in a representative capacity, and here British precedent is in favor of open voting.

The rule at popular elections in our own country has not been uniform. In some States open voting has prevailed from the beginning; in others, voting has been by ballot. The origin of these differences, while curious historically, is not without interest in this debate. I think I do not err in saying that the example of England was early recognized in Virginia and the more southern States, also in New York after the withdrawal of Holland. The Western States, including Kentucky, I need not remind the Senate, were carved out of Virginia. The great Northwest Territory was originally part of Virginia, and I presume that the habit which the Senator from Illinois tells us prevails throughout that region was derived originally from Virginia, as the latter State derived it originally from England. In New England the usage is otherwise; nor is it difficult to trace its origin. New England borrowed her system of secret voting at popular elections from the Puritan corporation which originally planted its settlements. By the Law of Corporations a majority governs, and this rule was practically enforced by secret voting. Here the simplicity of the times harmonized with classical example. Beans were used for ballots. A candidate being named, the elector voted by dropping a black bean or white bean into a box. The rule at popular elections was carried into elections by the Legislature. These early settlers were not the first to employ beans for ballots. The law of Athens enjoined that their magistrates should be chosen by a ballot of

beans: so we are told by Lucian, in his Dialogues.[1] In other places voting was by black and white pebbles.[2] These instances, besides showing a curious parallel with our New England way, illustrate the history of secret voting.

This brief statement shows the origin of the opposite rules in popular elections among us, — the South and West receiving theirs from Virginia and from England, and New England receiving hers from the practice of a Puritan corporation. I ought to mention that Rhode Island, which was organized under a charter from Charles the Second, was an exception; but in other States the original rule of secrecy in popular elections has prevailed from the beginning.

There is no question before us with regard to popular elections. We are considering how men should vote in a representative capacity. Much as I am in favor of secret voting at the polls, I cannot hesitate in declaring for open voting wherever men represent others. Nor can I see any reason for secrecy in elections by a legislative body which is not equally strong for secrecy in voting on the passage of laws. But nobody would dispense with the ayes and noes in our daily business. To my mind the question is clear. Republican institutions will gain by establishing the accountability of the representative, and I cannot doubt that this principle should be our guide in determining the manner of electing Senators under the National Constitution.

[1] The Sale of Philosophers: Works, tr. Francklin, (London, 1781,) Vol. I. p. 412.

[2] "Mos erat antiquus, niveis atrisque lapillis,
His damnare reos, illis absolvere culpâ."
OVID, *Metam.*, Lib. XV. 41, 42.

The amendment of Mr. Fessenden was rejected, — Yeas 6, Nays 28.

The bill passed the Senate, — Yeas 25, Nays 11, — also the House of Representatives, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. pp. 243, 244.

MAIL SERVICE BETWEEN THE UNITED STATES AND THE SANDWICH ISLANDS.

Speech in the Senate, on a Joint Resolution releasing the Pacific Mail Steamships from stopping at the Sandwich Islands on their Route to Japan and China, July 17, 1866.

The Senate having under consideration a joint resolution releasing the Pacific Mail Steamship Company from the portion of their contract requiring them to stop at the Sandwich Islands on their route to Japan and China, Mr. Wilson, of Massachusetts, moved to require, as a condition of release, the establishment of a monthly mail steamship line between San Francisco and the Sandwich Islands.

Mr. Sumner said : —

MR. PRESIDENT, — This question is not free from embarrassment, especially where one is in favor of the line to Japan, and also in favor of a line to the Sandwich Islands, as is the case with myself. I am anxious to see each of these lines established, believing each important to the general welfare, and especially to the commercial interests of the country. But, strong as is my desire, I am not able to see how the line to Japan can be advantageously held to turn aside and stop at the Sandwich Islands. To bring these two objects into one voyage is not unlike the idea of the elderly person who wished her Bible to be the smallest size book and the largest size type. The two things do not go together.

And yet, Sir, I confess that my interest in the Sandwich Islands inclines me to do all that I can to strengthen and increase our relations with them. I do not forget that these islands, though originally discovered by a British navigator, are mainly indebted for their present civilization to the United States. Missionaries of our country have planted churches and schools at an expense of at least a million dollars. One of our countrymen, the late John Pickering, of Boston, the eminent philologist and scholar, invented the alphabet by which the native language was reduced to a written text. The whalers of New England have made these islands a resting-place. Our ships on their way to China have made them a half-way house. Of all the foreign ships which reach there five sixths are of our country. Such are the ties of beneficence and of commerce by which we are bound to these islands. No other nation there has an interest comparable in character or amount to ours. Meanwhile the native population is constantly decaying, so that I presume now it is not more than fifty thousand.

This brief review furnishes a glimpse of our interest in these islands. They are the wards of the United States. We cannot turn away from them. The Government must add its contribution also. On this account I have heard with pleasure that a national ship, under the command of one of our most intelligent officers, is to be stationed at the Sandwich Islands. Her presence will exercise a salutary influence in sustaining the interests of our people. This is something. But I confess that I should like to see these islands bound to our continent by a steam line.

While declaring this desire, with my reasons for it,

I am not satisfied that it is proper to require the Japan line to perform this service. It is clear, from unanswerable testimony, that the stoppage of this line cannot be effected without such a deviation as materially to interfere with its operations.

The testimony presented by the report is positive. Here, for instance, is what is said by that eminent authority, Admiral Davis: —

"These considerations with regard to the eastern voyage appear to dispose of the whole question. They show that touching at the Sandwich Islands, on the return from China, would prolong the voyage so many days unnecessarily that an additional line of steamers must soon be established, provided the intercourse between China and America is to acquire that importance which is confidently expected."

This concerns the voyage from Japan to San Francisco. But Admiral Davis is also against stopping at the islands on the outward voyage.

It seems clear, then, that the Japanese line, in order to be effective, and to accomplish what is so much desired, must be left to itself, without being obliged to turn aside for any incidental purpose. It must be a Japanese line, and nothing else; and you must not forget, that, just in proportion as you impose upon it any additional obligations, you will impair its efficiency as one of the splendid links of commerce destined to put a girdle round the globe.

I am ready, therefore, to release the Japanese line from stopping at the Sandwich Islands; but at the same time I declare my hope that some other means will be found to secure a line to these islands.

In releasing the Company from this service, I am

willing to leave to them the full subsidy already appropriated; but I think they should be held to shorten their voyage in proportion to the time gained. This provision will remove an objection which has been made.

The joint resolution, as amended, passed the Senate, — Yeas 24, Nays 15, — but it was not considered in the House of Representatives. At the next session a bill became a law, authorizing the establishment of ocean mail steamship service between the United States and the Hawaiian Islands.[1]

[1] Statutes at Large, Vol. XIV. pp. 343, 344.

TENNESSEE NOT SUFFICIENTLY RECONSTRUCTED.

Speech in the Senate, on a Joint Resolution declaring Tennessee again entitled to Senators and Representatives in Congress, July 21, 1866.

The Senate considered a joint resolution from the House of Representatives "declaring Tennessee again entitled to Senators and Representatives in Congress," for which a substitute was reported by Mr. Trumbull, of Illinois, from the Judiciary Committee. The joint resolution from the House and the proposed substitute each had a preamble. In the debate, Mr. Sumner said: —

MR. PRESIDENT, — The question, as I understand it, is between two preambles. I agree with my friend from Illinois, that the preamble reported by him in many respects has the advantage of that from the House. It is fuller, and in its structure better. I am glad it sets forth how Tennessee lost her representation here, and also how she may again be rehabilitated. But, while according merit to the Senator's preamble in that respect, there are other particulars in which it fails. He himself has already recognized that it is no better than that of the House, when it sets forth that

"the body of the people of Tennessee have, by a proper spirit of obedience, shown to the satisfaction of Congress the return of said State to due allegiance to the Government, laws, and authority of the United States."

Here the two preambles are alike; there is no advantage in one over the other. But I understand the Senator is willing to alter this clause. If he consents to the alteration, and the alteration is made, then in this respect his preamble will be superior to that of the House. Clearly, Sir, the assumption is false; "the body of the people of Tennessee have" not, "by a proper spirit of obedience, shown to the satisfaction of Congress the return of said State to due allegiance to the Government, laws, and authority of the United States." I may go too far, when I say it is false that Tennessee has shown a proper spirit, to the satisfaction of Congress, — because, if Congress votes that, it will not be for me, or for any one else, to say it has voted a falsehood; but I do say Tennessee has not shown a proper spirit of obedience in the body of her people. All the evidence which thickens in the air from that State, and has been darkening our sky during all this winter, shows that Tennessee has not that spirit of obedience in the body of her people. Why, Sir, only this winter, the other House has been constrained to send a commission to Tennessee to investigate an outrage of unparalleled atrocity growing out of this very rebel spirit. How can the Senate aver that the body of that people, thus saturated with the spirit of disloyalty, thus set on fire and inflamed by this hatred to the Union, have shown to the satisfaction of Congress a proper spirit of obedience? Sir, you err, if you put in your statute-book any such assertion, which is historically untrue. You cannot make it true by your averment. History hereafter, when it takes up its avenging pen, will record the falsehood to your shame.

Mr. Sumner then adduced evidence of the actual spirit in Tennessee, when he was interrupted by Mr. Grimes, of Iowa, who referred to the testimony of generals and civilians. Mr. Sumner continued: —

That does not go to the question whether we can aver that there is a proper spirit of obedience in the body of her people. No general says there is a proper spirit of obedience in the body of her people. I challenge the Senator to cite the testimony showing a proper spirit of obedience in the body of her people. Generals testify that in their opinion it would be better to admit representatives from Tennessee on this floor and the floor of the other House. That is another question. Logically, it is not before me yet. I am now speaking of the erroneous character of this preamble. But I understand that the Senator from Illinois is willing to alter his preamble. I believe I am right, — am I not?

Mr. Trumbull. Yes, Sir; I am willing those words should go out.

Mr. Sumner. They ought to go out; and if they do go out, it will make his preamble in this respect superior to that from the House.

But there is another allegation in the Senator's preamble, which I must say is as erroneous as that on which I have remarked. He there declares, and calls upon us to declare, that the constitution adopted by Tennessee is republican in form. A constitution which disfranchises more than one quarter of its population republican in form! What, Sir, is a republican form of government? It is a government founded on the people and the consent of the governed. Sir, the constitution of Tennessee is not founded on the consent

of the governed. It cannot invoke in its behalf that great principle of the Declaration of Independence; therefore it is not republican in form. And when you allege that it is republican in form, permit me to say, you make an allegation false in fact. I do not raise any question of theory, but I submit that a constitution which on its face disfranchises more than one fourth of the citizens cannot be republican in form. You, Sir, will make a terrible mistake, if at this moment of your history you undertake to recognize it as such. You will inflict a blow upon republican institutions. I hope the Senator from Illinois, as he has consented to one amendment, will consent to another, and will strike out the words declaring this constitution republican in form and in harmony with the Constitution of the United States. Do not compel us to aver what history will look at with scorn. Who can doubt, when this war is considered gravely and calmly in the tranquillity of the future, that the historian must bring all these events to the rigid test of principle? Bringing them to such test, it will be impossible to recognize any government like that of Tennessee either as republican in form or in harmony with the National Constitution.

Mr. Trumbull then moved to strike out the first clause objected to, and insert instead, "and has done other acts proclaiming and denoting loyalty," which was agreed to. Mr. Sumner then moved to strike out the words "republican in form and not inconsistent with the Constitution and laws of the United States," which was also agreed to.

Mr. Sumner then moved his proviso, already moved in the Louisiana bill and the Colorado bill,[1] that the Act should not take effect "except upon the fundamental condition that within the State there shall be no denial of the electoral franchise, or of any other rights, on account of race or color, but all persons shall be equal before the law."

[1] *Ante*, Vol. XII. p. 185; Vol. XIII. p. 352.

This was lost, — Yeas 4, Nays 34. The four affirmative votes were, Mr. Gratz Brown, of Missouri, Mr. Pomeroy, of Kansas, Mr. Wade, of Ohio, and Mr. Sumner.

The bill passed the Senate, — Yeas 28, Nays 4, — and was approved by the President.[1] The four negative votes were, Mr. Gratz Brown, of Missouri, Mr. Buckalew, of Pennsylvania, Mr. McDougall, of California, and Mr. Sumner. Its preamble had been amended according to Mr. Sumner's desire, but he was not ready to receive Representatives and Senators from Tennessee except on the fundamental condition moved by him.

[1] Statutes at Large, Vol. XIV. p. 364.

THE SENATE CHAMBER: ITS VENTILATION AND SIZE.

Speech in the Senate, on an Amendment to the Civil Appropriation Bill, July 23, 1866.

On motion of Mr. Buckalew, of Pennsylvania, a committee was appointed to consider the ventilation and sanitary condition of the Senate wing of the Capitol; and the committee made an elaborate report.

July 23d, while the Senate had under consideration the bill making appropriations for sundry civil expenses of the Government, this Senator moved an amendment appropriating $117,685.25 for improvements approved and recommended in the report. In the debate that ensued, Mr. Sumner said: —

MR. PRESIDENT, — The Senator from Pennsylvania has entitled himself to the gratitude of all his brethren for the attention he has bestowed upon an uninviting subject, which concerns the comfort of the Senate, — I was about to say, the character of our legislation; for, while breathing this anomalous atmosphere, legislation itself must too often suffer with our bodies. But he will pardon me, if I suggest that he is not sufficiently radical in his proposition. I am aware that he is unwilling to be thought radical. The name is not pleasant to him.

Mr. Buckalew. I have no distaste for the name. I claim to be very radical on some subjects.

Mr. Sumner. Very well. I hope he will be radical now, — in other words, that he will be thorough in his remedy for the present case.

Catching a phrase from ancient Rome, the Senator says that the roof over our heads must be destroyed, as if it were another Carthage. To my mind, this is not enough; the walls by which we are shut in must be destroyed. Our present difficulty is less with the roof than with the surrounding inclosure, separating us entirely from the open air and the light of day. Windows are natural ventilators; but we have none. Let this chamber be brought to the open air and the light of day, and Nature will do the rest. From its commanding position on a beautiful eminence, where every breeze can reach it, the Capitol will have an invigorating supply from every quarter. I doubt if any public edifice in the world can compare in site with that enjoyed by it, — and I do not forget the monumental structures of London, Paris, Vienna, or Rome. But in entering this stone cage with glass above, we renounce the advantages and opportunities of this unparalleled situation.

I would have all this massive masonry about us taken down, and the chamber brought to the windows. This change would make ventilation easy, and secure all that the Senator so anxiously recommends. It is more revolutionary than his plan. It will be expensive, very expensive, I fear; for the very completeness of the original work is an impediment to change. This Capitol, as we all see, is built for immortality. Its dis-

advantages will not be less permanent than its advantages, unless we apply ourselves resolutely to their revision. Without legislation and positive effort on our part, this chamber will continue uncomfortable for generations and long centuries. Senators after us, in thickening ranks, will sit here as uncomfortable as ourselves. If not for ourselves, then for those who come after us, we should initiate a change.

Besides bringing this chamber to the windows, its proportions should be reduced, — I am disposed to say one half. A chamber of one half the size would answer every purpose of business, and not fail essentially even on occasions of display. Everything is now sacrificed to the galleries. Senators are treated as the gladiators of the ancient amphitheatre, not to make "a Roman holiday," but a Washington show. As many as fourteen or fifteen hundred people are constantly gathered in these galleries. But such surrounding multitudes are plainly inconsistent with the quiet transaction of business and the simple tone which belongs to legislation.

I am reminded of the testimony attributed to Sir Robert Peel, whose protracted parliamentary life made him an expert. Interrogated by the Committee of the House of Commons with regard to the proper size for the new chamber, he replied, that, though the House consisted of six hundred and fifty-eight members, yet that full number was rarely in attendance, so that on common occasions even a small house would not be filled, and in his judgment the chamber should be constructed with a view to the daily business rather than to the infrequent occasions when it would be crowded. His compendious conclusion was, that the House should

be comfortable every day, at the risk of a tight squeeze now and then. The same idea had been expressed before by one of the best of early English writers, Thomas Fuller, who in his proverbs says: "A house had better be too little for a day than too great for a year":[1] houses ought to be proportioned to ordinary, and not extraordinary occasions. In these concurring sayings I find practical sense.

Plainly the Senate Chamber is too big for our daily life. It is not proportioned to ordinary occasions or every-day business. We all know that anything in a common tone of voice is heard with difficulty, unless we give special attention. Now I cannot doubt that the chamber should be so reduced that a motion or question or remark in a common tone of voice would be easily heard by every Senator. This should have been the rule for the architect at the beginning; and I would have it followed now in the change I suggest. With seven hundred listeners in the galleries, and with the large corps of reporters, the public would be in sufficient attendance, and the business of the country would be transacted more easily and advantageously.

Looking at these enormous spaces, adapted to the eye rather than to the ear, I turn with envy to that other chamber where the Senate sat so many honorable years, and listened to speeches which now belong to the permanent literature of the country. I doubt if any Senator who remembers that interesting chamber would not prefer it to this amphitheatre. For the transaction of daily business it was infinitely superior; and even on rare occasions, when the republic hung

[1] Holy State: Of Building.

upon the voice of the orator, there were witnesses enough. The theory of our institutions was satisfied. The public was not excluded, and there were reporters to communicate promptly what was said.

The amendment was agreed to.

A SHIP-CANAL THROUGH THE ISTHMUS OF DARIEN.

Remarks in the Senate, on an Amendment to the Civil Appropriation Bill, July 25, 1866.

July 25th, the Senate having under consideration the bill making appropriations for sundry civil expenses of the Government, Mr. Conness, of California, moved the following amendment: —

"To provide for a survey of the Isthmus of Darien, under the direction of the War Department, with a view to the construction of a ship-canal, in accordance with the report of the Superintendent of the Naval Observatory to the Navy Department, $40,000."

In the debate that ensued, Mr. Sumner remarked: —

I HAVE had the advantage of cursorily examining the able and interesting report on this work by Admiral Davis. It is learned and instructive, and develops the importance of such a canal to the commerce of the United States. I need not remind you that California is necessarily interested, because it is across the Isthmus of Darien that we reach the distant part of our own country. Therefore this is to increase and extend the facilities of communication with a part of our own country. Unhappily, we are obliged to go outside of our own borders, but I do not know that it becomes on that account any the less important.

The Senate will easily see not only its practical

value, but also its grandeur in an historical aspect. From the time of Charles the Fifth, one of the aspirations of Spain, and indeed of all adventurers and navigators in those seas, has been to find what was often called "the secret of the strait," being a natural gate by which to pass from ocean to ocean. The proposition now is, not to find, but to make, a gate by which this object may be accomplished.

We may well be fascinated by the historic grandeur of the work; but I am more tempted by its practical value in promoting relations between distant parts of our own country and in helping the commerce of the world. But the pending proposition is simply to provide for surveys. There is no appropriation for the work. We do not bind ourselves in the future. Such an appropriation, whether regarded in a practical, scientific, or historic light, is amply commended. I shall gladly vote for it.

The amendment was agreed to, — Yeas 22, Nays 13.

INQUIRY INTO THE TITLE OF A SENATOR TO HIS SEAT.

Remarks in the Senate, on the Credentials of the Senator from Tennessee, July 26, 1866.

On the presentation of the credentials of Hon. David T. Patterson as a Senator from Tennessee, Mr. Sumner moved their reference to the Committee on the Judiciary, with a view to inquiry whether he could take the oaths required by Act of Congress and the rule of the Senate.[1] In remarks on this motion, Mr. Sumner referred to the case of Mr. Stark, of Oregon.[2] Afterwards, in reply to Mr. Grimes, of Iowa, he said: —

. . . . . .

BUT, Sir, there was something that fell from the Senator from Iowa to which I would make a moment's reply. He imagines, that, if we make this reference, we shall establish a dangerous precedent; and he even goes so far as to imagine the possibility that he or his colleague, arriving from the patriotic State of Iowa, may find their credentials called in question. Sir, the Senator forgets for a moment the history of the country: he forgets that we have just emerged from a great civil war, — that the State of Tennessee took part in that war, — and that the very question now under consideration is, whether the gentleman presenting himself as a Senator was compromised by that war.

[1] *Ante*, Vol. X. pp. 273, seqq. [2] *Ante*, Vol. VIII. pp. 208, seqq.

If in the State of Iowa there should unhappily be a rebellion, and if public report should announce that our patriot friend had taken part in it to such an extent as to sit on the bench as a judge, enjoying its commission and swearing allegiance to it, then should he present himself with credentials as a Senator, I think we should be justified in asking an inquiry; and that is the extent of what I ask now. I take the case the Senator from Iowa supposes, but remind you of well-known facts which he omits; and there, permit me to say, is the whole question. If the case of Tennessee were an ordinary case, like that of Iowa, there would be no occasion and no justification for inquiry. But it is not an ordinary case; it is a case incident to the anomalous condition of public affairs at this moment. It cannot be treated according to the ordinary rule; it is a new case, and to meet it we must make a new precedent.

The Senator is much afraid of precedents. Sir, I am not afraid of any precedent having for its object the protection of right; and just in proportion as new circumstances arise must they be met by a new precedent. New circumstances have arisen, and you are called on to meet them frankly, simply.

The motion prevailed, — Yeas 20, Nays 14.

July 27th, the Committee reported that Mr. Patterson, "upon taking the oaths required by the Constitution and laws, be admitted to a seat in the Senate of the United States"; and this report was adopted, — Yeas 21, Nays 11, — Mr. Sumner voting in the negative.

NO MORE STATES WITH THE WORD "WHITE" IN THE CONSTITUTION.

Speeches in the Senate, on the Admission of Nebraska as a State, July 27, December 14 and 19, 1866, and January 8, 1867.

The question of admitting Nebraska as a State followed that of Colorado, and with the same effort on the part of Mr. Sumner to require equal rights without distinction of color in the constitution of the new State. Nebraska, like Colorado, failed in this respect. Unquestionably, the discussion on these two cases prepared the way for the requirement of equal suffrage in the Rebel States.

July 27th, Mr. Wade, of Ohio, Chairman of the Committee on Territories, moved to proceed with the bill for the admission of the State of Nebraska into the Union, and urged its passage. Mr. Sumner followed.

MR. PRESIDENT, — I am very sorry to occupy the attention of the Senate even for one minute, but I shall be very brief. The Senator [Mr. Wade] tells us that the majority of the people in favor of the State government was about one hundred and fifty; and by such a slender, slim majority you are called to invest this Territory with the powers and prerogatives of a State. The smallness of the majority is an argument against any present action; but, going behind that small majority, and looking at the number of voters, the argument increases, for the Senator

tells us there were but eight thousand voters. The question is, Will you invest those eight thousand voters with the powers and prerogatives now enjoyed in this Chamber by New York and Pennsylvania and other States of this Union? I think the objection on this account unanswerable. It would be unreasonable for you to invest them with those powers and prerogatives at this time.

But, Sir, I confess that with me the prevailing objection is, that the State does not present itself with a constitution republican in form, and on this question I challenge the deliberate judgment of my excellent friend, the Senator from Ohio, who is now trying to introduce this Territory into the Union as a State. I challenge the distinguished Senator to show that a constitution which disqualifies citizens on account of color can be republican in form. Sir, I say it is not a republican government, and I am sorry that my distinguished friend lends his countenance to a government of such a character. I wish that my friend would lift himself to the argument that such a government cannot be republican, and must not be welcomed as such on this floor.

I forbear entering into the argument. Again and again I have presented it. Senators have made up their minds. Each must judge for himself. It is not without pain and trouble that I find myself constrained to differ from valued friends and associates, with whom I am always proud to agree; but I cannot recognize a constitution with the word "white" as republican. With such conviction, it is my duty to oppose the welcome of this Territory as a State just so long as I can.

Mr. Wade said in reply: "It is republican in form, but is not that kind of republicanism that I approve of. If I had my way about it, nobody would be excluded from the franchise that was a male citizen of proper age, let his color be what it would. That would be the color of republicanism that I should like the best. But to deny that under the Constitution of the United States this constitution is republican in form is to deny that we have a republic at all. . . . . The State of Massachusetts is a little forward on this subject. I am glad of it."

Mr. Hendricks, of Indiana, Mr. Doolittle, of Wisconsin, Mr. Pomeroy, of Kansas, Mr. Howard, of Michigan, Mr. Garrett Davis, of Kentucky, Mr. Kirkwood, of Iowa, Mr. Buckalew, of Pennsylvania, Mr. Yates, of Illinois, Mr. Nye, of Nevada, and Mr. Edmunds, of Vermont, took part in the debate. In the course of Mr. Nye's remarks, the following occurred.

MR. NYE. But my conscientious friend from Massachusetts, I am terribly afraid, mistakes twinges of dyspepsia for constitutional scruples. [*Laughter.*]

MR. SUMNER. I never had the dyspepsia in my life.

MR. NYE. I am glad to hear it; it is some other disease, then. [*Laughter.*] This word "white" is the nightmare of his mind.

Mr. Wade, speaking again, said: "The Senator from Massachusetts has a certain one idea that covers the whole ground. . . . . All the opposition that he really has to it is because they put the word 'white' in their constitution."

Mr. Sumner moved the proviso already moved on the Louisiana and Colorado bills, requiring as a fundamental condition that within the State there should be no denial of the elective franchise or of any other right on account of race or color, and that this condition should be ratified by the voters of the Territory; which was lost, — Yeas 5, Nays 34. The Senators voting yea were Mr. Edmunds, of Vermont, Mr. Fessenden, of Maine, Mr. Morgan, of New York, Mr. Poland, of Vermont, and Mr. Sumner.

The bill then passed the Senate, — Yeas 24, Nays 18. It also passed the House of Representatives, but did not receive the signature of the President.

At the next session of Congress, Mr. Wade introduced another bill for the admission of Nebraska, which he afterwards reported from the Committee on Territories. Notwithstanding its constitution with the word "white," December 14th, he moved to proceed with the consideration of this bill. Mr. Sumner was against taking it up.

. . . . .

I HOPE you do not forget the great act of yesterday. By solemn vote, you have recorded yourselves in favor of Human Rights, and have established them here at the National Capital. And now, Sir, you are asked to set aside Human Rights, and to forget the triumph and example of yesterday. Before you is a constitution with the word "white," — a constitution creating a white man's government, such as is praised by Senators on the other side, — and you are asked to recognize that disreputable instrument. I am against any such government, and I trust the Senate will not proceed with its consideration.

Do not to-day undo the good work of yesterday, nor imitate that ancient personage who unwove at night the web woven during the day, so that her work never proceeded to any end. Do not, I entreat you, unweave to-day the beautiful web of yesterday.

Instead of undoing, let us do always; nor is there any lack of measures deserving attention. There is the Bankrupt Bill, practical and beneficent in character, and involving no sacrifice of Human Rights. This is a measure of real humanity, calculated to carry tranquillity and repose into the business of the country. Besides, it has been too long postponed.

Mr. Wade replied with some warmth, when the following passage occurred.

MR. SUMNER. Mr. President, I hope to be pardoned, if I make one word of reply to the Senator. He seemed to think his argument advanced by personal allusions to myself. If I understand him, he sought to show inconsistency on my part.

MR. WADE. Yes, I think I did.

MR. SUMNER. I am at a loss to understand how the Senator can find inconsistency, unless he chooses to misunderstand facts. He assumed that I voted for the admission of Tennessee.

MR. WADE. When you said you did not, I gave it up.

MR. SUMNER. My name is recorded, on all the yeas and nays, and they were numerous, against the admission of Tennessee; and the reason I assigned was, that the constitution contained the word "white."

MR. WADE. You voted for the Constitutional Amendment.

MR. SUMNER. Yes, I did vote for the Constitutional Amendment, in its final form;[1] but does the Senator consider himself bound to admit a Rebel State refusing the suffrage to freedmen? I wish my friend to answer that.

MR. WADE. No, I do not.

MR. SUMNER. I knew he did not.

MR. WADE. I do not know that I understand the Senator. Let me say that I should consider myself bound by the Constitutional Amendment, if the Southern States complied with it within a reasonable time; and that reasonable time, in my judgment, is nearly elapsed.

MR. SUMNER. Even with the word "white" in a constitution?

MR. WADE. Without regard to that.

MR. SUMNER. Without regard to the rights of the freedman?

MR. WADE. On complying with the requisitions of the Constitutional Amendment, I should vote for them.

[1] The Fourteenth Amendment.

MR. SUMNER. I do not agree with the Senator. I distinctly stated, when the Amendment was under discussion, that I did not accept it as a finality, and that, so far as I had a vote on this floor, I would insist that every one of these States, before its Representatives were received in Congress, should confer impartial suffrage, without distinction of color; and now I ask my friend what inconsistency there is, when I insist upon the same rule for Nebraska.

MR. WADE. I cannot see how the Senator could have misled the Southern States with that. When they complied with all we asked of them in the Constitutional Amendment, I supposed we could not refuse to let them in on those terms. . . . . Certainly I am as much for colored suffrage as any man on this floor; but when I make such an agreement as that, I stand by it always.

MR. SUMNER. When I make an agreement, I stand by it. But I entered into no such agreement, and I do not understand that the Senate or Congress entered into any such agreement. I know that certain politicians and editors have undertaken to foist something of this sort into the Constitutional Amendment; but there was no authority for it. The Committee on Reconstruction may have reported a resolution to that effect, but they never called it up, and I know well that I offered a resolution just the contrary.

MR. DOOLITTLE. The Senator from Massachusetts will allow me?

MR. SUMNER. Certainly.

MR. DOOLITTLE. The Committee on Reconstruction reported a resolution, that, if each State should adopt this Amendment, and the Amendment should become a part

of the Constitution, be adopted by a sufficient number of States, then the States might be accepted. That was what they reported.

MR. JOHNSON. It was a bill.

MR. WADE. That was the understanding I alluded to.

MR. BROWN. That was not acted upon.

MR. SUMNER. It was not acted on. I suppose that those who had it in charge did not venture to invite a vote upon it.

MR. DOOLITTLE. It was laid on the table by a vote in the House of Representatives, upon the yeas and nays.

MR. SUMNER. It never became in any respect a legislative act; therefore nobody entered legislatively into the agreement attributed to me. How the Senator could attribute it to me, in the face of constant asseveration that I would not be a party to any such agreement, surpasses comprehension.

. . . . . .

So far as the Senator considered the merits of the question, I will not now reply. There may be a time for that, and the magnitude of the issue may justify me even in setting forth arguments already adduced. If I repeat myself, it is because you repeat an effort which ought never to have been made. But I enter my most earnest protest. To my mind this is a most disastrous measure. I use this word advisedly; it is disastrous because it cannot fail to impair the moral efficiency of Congress, injure its influence, and be something like a bar to the adoption of a just policy for the Rebel States. Sir, we are now seeking to obliterate the word "white" from all institutions and constitutions there; and yet Senators, with that great question before them, rush swiftly forward to welcome a new

State with the word "white" in its constitution. In other days we all united, and the Senator from Ohio was earnest among the number, in saying, "No more Slave States!" I now insist upon another cry: "No more States with the word 'white'!" On that question I part company with my friend from Ohio. He is now about to welcome them.

The motion of Mr. Wade was adopted, — Yeas 21, Nays 11, — and the bill was before the Senate for consideration. Mr. Gratz Brown then offered the proviso, offered formerly by Mr. Sumner,[1] requiring, as a fundamental condition, that there should be no denial of the elective franchise or of any other right on account of race or color, and upon the further condition that this requirement be submitted to the voters of the Territory. In the earnest debate that ensued, Mr. Sumner spoke repeatedly, especially in reply to Mr. Wade, setting forth again the objections already made to the admission of Colorado.

December 19th, Mr. Sumner said: —

I HAVE another word for the Senator from Ohio. He does not see the importance of this question. It is the question of every day, a commonplace question. There is the precise difference between the Senator from Ohio and other Senators. There have been times when the Senator has most clearly seen the importance of a question of Human Rights. The Senator has not forgotten a contest in which he took part with myself against an effort to precipitate Louisiana back into this Chamber with a constitution like that of Nebraska. Now the Senator remembers it well. The Senator from Illinois [Mr. TRUMBULL] tried to put that constitution through the Senate; but, with all his abilities and the just influence that belonged to his position, he could not do it. The Senator from Ohio will not be instructed by that example. He now makes a kin-

[1] *Ante*, p. 130.

dred effort, seeking to introduce into the Union a State which defies the first principle of Human Rights. The Senator becomes the champion of that community. He who has so often raised his voice for Human Rights now treats the question as trivial: it is a technicality only; that is all.

Sir, can a question of Human Rights be a technicality? Can a constitution which undertakes to disfranchise a whole race be treated in that effort as only a technicality? And yet that is the position of the Senator. Why, Sir, the other day he did openly arraign the constitution of Louisiana, and the effort of our excellent President, Abraham Lincoln, who pressed it upon us. The constitution of Louisiana was odious; it should not have been presented to the Senate; and I doubt if there is any Senator on the right side who does not now rejoice that it was defeated.

Then followed a passage with Mr. Kirkwood, of Iowa, who volunteered to consider that Mr. Sumner had attacked the constitution of Iowa, when he had made no allusion to it.

MR. KIRKWOOD. He compares the case of the Territory of Nebraska to that of the lately rebellious States. I think there is a great difference between them. The people of the Territory of Nebraska are loyal men; the people of the late rebellious States are not loyal; and when he compares the one with the other, I think he does injustice to himself and to the people of that Territory.

MR. SUMNER. I made no such comparison.

MR. KIRKWOOD. He speaks of the constitution submitted by some persons in Louisiana as odious, as offensive, and compares the constitution of Nebraska and the constitution of that State, or proposed State, intending to convey the idea, I presume, that the constitution of Nebraska is odious and offensive. Now I wish to say to that Senator that the constitution of Nebraska and the constitution of Iowa in this particular are identical. Does he call the constitution of Iowa odious and offensive? .... The people of Iowa are as loyal as the people of Massachusetts are.

MR. SUMNER. No doubt about it. I never said otherwise.

MR. KIRKWOOD. But he said our constitution was offensive.

MR. SUMNER. I made no allusion to the constitution of Iowa.

MR. KIRKWOOD. But you made an allusion to a constitution precisely similar in this identical point to that of Iowa. . . . . I repeat again, I cannot see the difference between characterizing the constitution of Iowa as odious and offensive and characterizing the constitution of another State that agrees with it precisely in terms in that way.

MR. SUMNER. May I ask the Senator if he considers that provision in the constitution of Iowa right or wrong ?

MR. KIRKWOOD. I conceive it to be the business of the people of Iowa, and not the business of the Senator from Massachusetts. The people of Iowa will deal with it in their own way, when they see fit; and, as a loyal people, they have the right to do so; and so, I apprehend, have the people of Nebraska.

MR. SUMNER. The Senator from Iowa has not been in this body very long. Had he been here longer, he would have known that toward the people of Iowa, by vote and voice, I have always been true. One of my earliest efforts in this Chamber, now many years ago, was in protection of the interests of the people of Iowa. On that occasion, as the record shows, I received from the Senators of Iowa expressions of friendship and kindness which I cannot forget. I have never thought of that State except with kindness and respect. I have never alluded to that State except with kindness and respect. I have made no allusion to Iowa to-night. I have not had Iowa in my mind to-night. And, Sir, for one good reason: it is my habit, when I speak, so far as I am able, to speak directly to the question. Iowa has not been before us; her constitution has not been under discussion; therefore I have had no occasion to express any opinion upon it.

But there is another constitution which has been before us, and on which I have been asked to vote. On that constitution I express an opinion. I say it contains an odious and offensive principle; and I doubt

if the Senator from Iowa would undertake to say that an exclusion from rights on account of color would be properly characterized otherwise than as odious and offensive. I did not know that the constitution of Iowa was open to that objection, or at least it was not in my mind, when I spoke; but I do know that the constitution of Nebraska is open to that objection, and therefore I pronounce it odious and offensive. It contains a disfranchisement of men on account of color, and it is a little difficult to speak of that without losing a little patience. It is difficult at this time, when we have such great responsibilities with regard to the States lately in rebellion, to look upon a candidate State like that of Nebraska, coming forward with a constitution containing this principle of disfranchisement, without the strongest disposition to use language which I do not want to use, — language of the utmost condemnation. Such a constitution at this moment from a new State does not deserve any quarter. Such a constitution ought to be a hissing and a by-word; and I am at a loss to understand how any Senator, at this time, not entirely insensible to our great responsibilities with regard to the States lately in rebellion, can look upon a new constitution like this except as a hissing and a by-word. Sir, it is a shame to the people that bring it here; and it will be a shame to Congress, if it gives it its sanction. I use that language purposely, and I stand by it, even at the expense of the criticism of the Senator from Iowa.

But, in saying this, I intend no reflection upon Iowa. That State is not before us. Iowa is not a new State, or Territory rather, applying for admission; nor is it, thank God, a rebel State; but it is a true loyal State,

which in other days, some years ago, in haste and under sinister influence, introduced words into its constitution which the Senator from that State now brings forward in this Chamber, not for condemnation, but from his tone I should suppose for praise. Sir, he should rather follow another example, and throw a cover over that part of the constitution of his State which is unworthy the civilization of our times.

I am sorry to have been led into these remarks. I was astonished that the Senator should compel me to make them. When I go back to the earlier days, I think that perhaps I might have expected other things from a Senator of Iowa.

And now, Sir, I come again to the question which in the opinion of the Senator from Ohio is so trivial, — nothing more than a question of *assumpsit*.

Mr. Wade. A common count in *assumpsit*.

Mr. Sumner. A common count.

. . . . .

January 8th, after the holidays, the question was resumed, when Mr. Sumner said: —

. . . . .

But, Sir, the course of the Senate on this bill fills me with anxiety. Since the unhappy perversity of the President, nothing has occurred which seems to me of such evil omen. It passes my comprehension how we can require Equal Rights in the Rebel States, when we deliberately sanction the denial of Equal Rights in a new State, completely within our jurisdiction and about to be fashioned by our hands. Others may commit this inconsistency; I will not. Others may make the sacrifice; I cannot.

It seems as if Providence presented this occasion in order to give you an easy opportunity of asserting a principle infinitely valuable to the whole country. Only a few persons are directly interested; but the decision of Congress now will determine a governing rule for millions. Nebraska is a loyal community, small in numbers, formed out of ourselves, bone of our bone and flesh of our flesh. In an evil hour it adopted a constitution bad in itself and worse still as an example. But neither the tie of blood nor the fellowship of party should be permitted to save it from judgment. At this moment Congress cannot afford to sanction such wrong. Congress must elevate itself, if it would elevate the country. It must itself be the example of justice, if it would make justice the universal rule. It must itself be the model it recommends. It must begin Reconstruction here at home.

With pain I differ from valued friends around me, and see a line of duty which they do not see. Such is my deference to them, that, if the question were less clear or less important, I should abandon my own conclusions and accept theirs. But when the question is so plain and duty so imperative, I have no alternative.

Let me add, that, in taking the course I do, I have nothing but friendly feelings for the Territory of Nebraska, or for the men she has sent to represent her in the Senate. I wish to see Nebraska populous and flourishing, and the home of Human Rights secured by irrevocable law; and as for her Senators, I know them now so well that I shall have peculiar pleasure in welcoming them on this floor. But there are voices from Nebraska which I wish you to hear.

Here Mr. Sumner read letters against the admission of Nebraska with her present constitution, and then proceeded.

In looking at this question, we are met at the threshold by the fact that in a vote of nearly eight thousand there was a majority of only one hundred in favor of this disreputable constitution.[1] At the call of less than four thousand voters, you are to recognize a State government which begins its independent life by defiance of fundamental truths. I am at a loss to understand the grounds on which this can be done, unless, in anxiety to gratify the desires of a few persons and to welcome the excellent gentlemen from Nebraska, you are willing to set aside great principles of duty at a critical moment of national history. It is pleasant to be "amiable"; but you have no right to be amiable at the expense of Human Rights. It is pleasant to be "lenient," as the Senator [Mr. WADE] who is urging this bill expresses it; but take care, that, in lenity to this Territory, you are not unjust. There can be no such thing as "lenity" where Human Rights are in question.

The other Senator from Ohio [Mr. SHERMAN] does not leave room for discretion. He says we are bound by the Enabling Act passed some time ago. Assume that the Senator is right, and that the Enabling Act creates an obligation on the part of Congress, — all of which I deny, — I insist that there has been no compliance with this Act, either in form or substance.

Looking at the Enabling Act, we find that it has not been complied with in form. This can be placed beyond question. By this Act it is provided that a "Con-

[1] Total vote, 7776: for the constitution, 3938; against, 3838: majority, 100. — *Congressional Globe*, 39th Cong. 2d Sess., pp. 126, 852.

vention" of the people of Nebraska shall be chosen by the people, that the election for such "Convention" shall be held on "the first Monday in June thereafter," and that "the members of the Convention thus elected shall meet at the capital of said Territory on the first Monday in July next." Now, in point of fact, such Convention was duly chosen, and it met, according to the provisions of the Enabling Act. Thus far all was right. But, after meeting, it voluntarily adjourned or dissolved, without framing a constitution. Afterward the Territorial Legislature undertook to do what the Convention failed to do. The Territorial Legislature adopted a constitution, and submitted it to the people; and this is the constitution before you. Plainly there has been no compliance with the Enabling Act, so far as it prescribes the proceedings for the formation of a constitution. Nothing can be clearer than this. The Act prescribes a Convention at a particular date. Instead of a Convention at the date prescribed, we have the Legislature acting at a different date; so that there is an open non-compliance with the prescribed conditions. It is vain, therefore, to adduce it. As well refer to Homer's Iliad or the Book of Job.

But the failure in substance is graver still. By the Enabling Act it is further provided "that the constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence." Here are essential conditions which must be complied with. The constitution must be "republican." Now I insist always that a constitution which denies Equality of Rights cannot be republican. It may be republican according to the imperfect notions of an earlier period,

or even according to the standard of Montesquieu; but it cannot be republican in a country which began its national life in disregard of received notions and the standards of the past. In fixing for the first time an authoritative definition of this requirement, you cannot forget the new vows to Human Rights uttered by our fathers, nor can you forget that our republic is an example to mankind. This is an occasion not to be lost of acting not only for the present in time and place, but for the distant also.

But there is another consideration, if possible, more decisive. I say nothing now of the requirement that the new constitution shall be "not repugnant to the Constitution of the United States," but I call attention to the positive condition that it must be "not repugnant to the principles of the Declaration of Independence." And yet, Sir, in the face of this plain requirement, we have a new constitution which disfranchises for color, and establishes what is compendiously called "a white man's government." This new constitution sets at nought the great principles that all men are equal and that governments stand on the consent of the governed. Therefore, I say confidently, it is not according to "the principles of the Declaration of Independence." Is this doubted? Can it be doubted? You must raze living words, you must kill undying truths, before you can announce any such conformity. As long as those words exist, as long as those truths shine forth in that Declaration, you must condemn this new constitution. I remember gratefully the electric power with which the Senator from Ohio [Mr. WADE], not many years ago, confronting the representatives of Slavery, bravely vindicated these principles as "self-

evident truths." "There was a Brutus once that would have brooked the eternal Devil" as easily as any denial of these. Would that he would speak now as then, and insist on their practical application everywhere within the power of Congress, and thus set up a wall of defence for the downtrodden!

Thus the question stands. The Enabling Act has not been complied with in any respect, whether of form or substance. In form it has been openly disregarded; in substance it has been insulted. The failure in form may be pardoned; the failure in substance must be fatal, unless in some way corrected by Congress.

Nobody doubts that Congress, in providing for the formation of a State constitution, may affix conditions. This has been done from the beginning of our history. Search the Enabling Acts, and you will find these conditions. They are in your statute-book, constant witnesses to the power of Congress, unquestioned and unquestionable.

Thus, for instance, the Enabling Act for Nebraska requires three things of the new State as conditions precedent.

First. That Slavery shall be forever prohibited.

Secondly. That no inhabitant shall be molested in person or property on account of religious worship.

Thirdly. That the unappropriated public lands shall remain at the sole disposition of the United States, without being subject to local taxation, and that land of non-residents shall never be taxed higher than that of residents.

Read the Act, and you will find these conditions. Does any Senator doubt their validity? Impossible.

But this is not all. In addition to these three con-

ditions are three others, which in order, if not in importance, stand even before these. They are contained in words already quoted, but strangely forgotten in this debate: —

"That the constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

Consider this clause: you will find it contains three conditions, each of vital force.

First. The constitution must be "republican." It does not say "in form" merely, but "republican": of course "republican" in substance and reality.

Secondly. The constitution must be "not repugnant to the Constitution of the United States." But surely any constitution which contains a discrimination of rights on account of color must be "repugnant" to the Constitution of the United States, which contains no such discrimination. The text of the National Constitution is blameless; but the text of this new constitution is offensive. Hence its repugnancy.

Thirdly. The constitution must be "not repugnant to the principles of the Declaration of Independence." These plain words allow no equivocation. Solemnly you have required this just and noble conformity. But is it not an insult to the understanding, when you offer a constitution which contains a discrimination of rights on account of color?

Now in all these three requirements, so authoritatively made the conditions of the new constitution, Nebraska fails, wretchedly fails. It is vain to say that the people there were not warned. They were warned. These requirements were in the very title-deed under which they claim.

Mr. President, pardon me, I entreat you, if I am tenacious. At this moment there is one vast question in our country, on which all others pivot. It is justice to the colored race. Without this I see small chance of security, tranquillity, or even of peace. The war will still continue. Therefore, as a servant of truth and a lover of my country, I cannot allow this cause to be sacrificed or discredited by my vote. Others will do as they please; but, if I stand alone, I will hold this bridge.

The persistence of Mr. Sumner was encountered by Mr. Wade, who said: —

"I think it is the business of the statesman to overlook these little small technicalities which gentlemen argue about in this body. They make a great fuss about the word 'white' in a constitution of a State where there are no blacks, — where the question is a simple abstraction."

Mr. Cowan, of Pennsylvania, dealt with the question of Equality, but with pleasantry.

"My honorable friend, the Senator from Massachusetts, is six feet three inches in height, and weighs two hundred and twenty pounds; I am six feet three inches in height, and weigh one hundred and ninety pounds, if you please. That is not equality. My honorable friend from Maine here is five feet nine inches" ——

Mr. Fessenden. And a half. [*Laughter.*]

Mr. Cowan. I beg the honorable Senator's pardon. I would not diminish his stature an inch or half an inch, nor take a hair from his head; and he weighs one hundred and forty pounds, if you please. Is that equality? The honorable Senator from Massachusetts is largely learned; he has traversed the whole field of human learning; there is nothing, I think, that he does not know, that is worth knowing, — and this is no empty compliment that I desire to pay him now; and he is so much wiser than I am, that at the last elections he divined exactly how they would result, and I did not. [*Laughter.*] He rode triumphantly upon the popular wave; and I was overwhelmed, and came out with eyes and nose suffused, and hardly able to gasp.

Mr. Sumner. You ought to have followed my counsel.

Mr. Cowan. Why should I not? What was Providence doing in that? If Providence had made me equal to the honorable Senator, I should not have needed his counsel, and I should have ridden, too, on the topmost wave. [*Laughter.*]

January 9th, the amendment of Mr. Gratz Brown was rejected, — Yeas 8, Nays 24. The Senators voting in the affirmative were Mr. Cowan, of Pennsylvania, Mr. Edmunds, of Vermont, Mr. Fessenden, of Maine, Mr. Grimes, of Iowa, Mr. Howe, of Wisconsin, Mr. Morgan, of New York, Mr. Poland, of Vermont, and Mr. Sumner.

Mr. Edmunds then moved the following amendment : —

"That this act shall take effect with the fundamental and perpetual condition that within said State of Nebraska there shall be no abridgment or denial of the exercise of the elective franchise or of any other right to any person by reason of race or color, excepting Indians not taxed."

It will be observed that this differs from Mr. Sumner's in not requiring the submission of the fundamental condition to the voters of the Territory. This amendment was lost by a tie-vote, — Yeas 18, Nays 18. At the next stage of the bill, being again moved by Mr. Edmunds, it was adopted, — Yeas 20, Nays 18. The bill was then passed by the Senate, — Yeas 24, Nays 15.

In the other House, the proviso adopted by the Senate was changed, on motion of Mr. Boutwell, of Massachusetts, so as to require that the Legislature of the State should by a solemn public act declare consent to the fundamental condition, and the bill was then passed, — Yeas 103, Nays 55. In this amendment the Senate concurred.

February 8th, the bill was again passed in the Senate, by a two-thirds vote, over the veto of the President, — Yeas 31, Nays 9 ; and February 9th, in the other House, by a two-thirds vote, — Yeas 120, Nays 44. And so the bill became a law.[1] Colorado was less fortunate.[2]

Thus the protracted struggle for Equal Rights in Nebraska, establishing a fundamental condition, was crowned with success, preparing the way for similar requirement in the Rebel States.

[1] Statutes at Large, Vol. XIV. p. 391.

[2] *Ante*, Vol. XIII. p. 374.

THE METRIC SYSTEM OF WEIGHTS AND MEASURES.

Speech in the Senate, on two Bills and a Joint Resolution relating to the Metric System, July 27, 1866.

May 18th, Mr. Sumner moved the appointment by the Chair of a special committee of five, to which all bills and measures relating to the metric system should be referred; and the motion was agreed to.

May 23d, the Chair appointed Mr. Sumner, Mr. Sherman, of Ohio, Mr. Morgan, of New York, Mr. Nesmith, of Oregon, and Mr. Guthrie, of Kentucky. Two bills and a joint resolution which had passed the House of Representatives were referred to the committee, and July 16th reported to the Senate by Mr. Sumner, with the recommendation that they pass, namely: —

"A Bill to authorize the use of the metric system of weights and measures."

"A Joint Resolution to enable the Secretary of the Treasury to furnish to each State one set of the standard weights and measures of the metric system."

"A Bill to authorize the use in post-offices of weights of the denomination of grams."

July 27th, on motion of Mr. Sumner, these were taken up and passed.

MR. PRESIDENT, — At another time I might be induced to go into this question at some length; but now, in these latter days of a weary session, and under these heats, I feel that I must be brief. And yet I could not pardon myself, if I did not undertake,

even at this time, to present a plain and simple account of the great change which is now proposed.

There is something captivating in the idea of weights and measures common to all the civilized world, so that, in this at least, the confusion of Babel may be overcome. Kindred is that other idea of one money; and both are forerunners, perhaps, of the grander idea of one language for all the civilized world. Philosophy does not despair of this triumph at some distant day; but a common system of weights and measures and a common system of money are already within the sphere of actual legislation. The work has already begun; and it cannot cease until the great object is accomplished.

If the United States come tardily into the circle of nations recognizing a common system of weights and measures, I confess that I have pleasure in recalling the historic fact that at a very early day this important subject was commended to Congress. Washington, in a speech to the First Congress, touched the key-note, when he used the word "uniformity" in connection with this subject. "Uniformity," he said, "in the currency, weights, and measures of the United States is an object of great importance, and will, I am persuaded, be duly attended to."[1] Then again in a speech to the next Congress he went further, in expressing a desire for "a standard at once *invariable and universal*."[2] Here he foreshadowed a system common to the civilized world. It is for us now to recognize the standard he thus sententiously described. All hail to a standard "invariable and universal"!

I shall not occupy time in developing the history

[1] Annals of Congress, 1st Cong. 2d Sess., col. 933, January 8, 1790.
[2] Ibid., 2d Cong. 1st Sess., col. 15, October 25, 1791.

of these efforts on the part of our Government; but I cannot forbear mentioning that Mr. Jefferson, while Secretary of State, made an elaborate report, where he proposed "reducing every branch to the same decimal ratio already established in the coins, and thus bringing the calculation of the principal affairs of life within the arithmetic of every man who can multiply and divide plain numbers." [1] Here is an essential element in the common system we seek to establish. This was in 1790, when France was just beginning those efforts which ended at last in the establishment of the metric system. The subject was revived at different times in Congress without definite result. President Madison, in his annual message of 1816, called attention to it in the following words: —

"The great utility of a standard *fixed in its nature and founded on the easy rule of decimal proportions* is sufficiently obvious. It led the Government at an early stage to preparatory steps for introducing it; and a completion of the work will be a just title to the public gratitude." [2]

Out of this recommendation originated that call of the Senate which drew forth the masterly report of John Quincy Adams on the whole subject of weights and measures, where learning, philosophy, and prophetic aspiration vie with each other. After reviewing whatever had appeared in the past, and subjecting it all to careful examination, he says of the French metric system, then only an experiment: —

"This system approaches to the ideal perfection of uniformity applied to weights and measures, and, whether des-

[1] Plan for establishing Uniformity in the Coinage, Weights, and Measures of the United States, July 13, 1790: Writings, Vol. VII. p. 488.

[2] Annals of Congress, 14th Cong. 2d Sess., col. 14, December 3, 1816.

tined to succeed or doomed to fail, will shed unfading glory upon the age in which it was conceived and upon the nation by which its execution was attempted and has been in part achieved." [1]

This was in 1821, when the metric system, already invented, was still struggling for adoption in France.

This brief sketch shows how from the beginning the National Government has been looking to a system common to the civilized world. And now this aspiration seems about to be fulfilled. The bills before you have already passed the other House; if they become laws, as I trust, they will be the practical commencement of the "new order."

Before proceeding to explain the proposed system, let me exhibit for one moment the necessity of change, as illustrated by weights and measures in the past.

Language is coeval with man as a social being. Weights and measures are hardly less early in origin. They are essential to the operations of society, and are naturally common to all who belong to the same social circle. At the beginning, each people had a system of its own; but as nations gradually intermingle and distant places are brought together by the attractions of commerce, the system of one nation becomes inadequate to the necessities of the composite body. A common system becomes important just in proportion to the community of interests. Next to diversity of languages, discordant weights and measures attest the insulation of nations.

The earliest measures were derived from the several parts of the human body. Such was the cubit, which

[1] Report upon Weights and Measures, p. 48.

was the distance between the elbow and the end of the middle finger, being about twenty-two inches. Such also were the foot, the hand, the span, the nail, and the thumb. These measures were derived from Nature, and they were to be found wherever a human being existed. But they partook of the uncertainty in the proportions of the human form. When Selden, in his "Table-Talk," wittily likened Equity, so far as it depended on the Chancellor, to a measure determined by the length of the Chancellor's foot, he exposed not only the uncertainty of Equity, but also the uncertainty of such a measure.

Even in Greece, where Art prevailed in the most beautiful forms, the famous *stadium* was none the less uncertain. It was the distance that Hercules could run without taking breath, being six hundred times the length of his foot.

Our own standards, derived from England, are of an equally fanciful character. The unit of *length* is the barley-corn, taken from the middle of the ear and well dried. Three of these in a straight line make an inch. The unit of *weight* is a grain of wheat, taken, like the barley-corn, from the middle of the ear and well dried. Of these, twenty-four are equal to a penny-weight. Twenty pennyweights make an ounce, and twelve ounces make a pound. The unit of *capacity* is derived from the weight of grains of wheat. Eight pounds of these make one gallon of wine measure.

Nor are the extreme vagueness and instability of these standards the only surprise. There is no principle of science or convenience in the progression of the different series. Thus we have two pints to a quart, three scruples to a dram, four quarts to a gallon,

five quarters to an ell, five and a half yards to a perch, six feet to a fathom, eight furlongs to a mile, twelve inches to a foot, sixteen ounces to a pound, twenty units to a score.

Then, as if the only ruling principle governing the selection were discord, we have different measures bearing the same name, such as the wine pint and the dry pint, the ounce Troy and the ounce avoirdupois. Take these last two measures as illustrating the prevailing confusion. Both seem to come from France. The Troy weight is supposed to derive its name from the French town of Troyes, where a celebrated fair was once held. The term "avoirdupois" is French, and seems to have been part of a statute which declared how weights should be determined. But Troy and avoirdupois are different measures.

These measures, having constant differences, had accidental differences also, in different parts of England, and also in different parts of our own country. Even where the names are alike, the measures are often unlike. In England the diversity was almost infinite, so that these same measures differed in different counties, and sometimes in different towns of the same county. Latterly in the United States the standard has been regulated by law, but the confusion from the measures still continues. The question naturally arises, why such confusion has been allowed so long without correction. The answer is easy. Except in rare instances, the triumphs of science are slow and gradual. Traditional prejudice must be overcome. Each nation is attached to its own imperfect system, as to its own language. Even though inferior to another, it has the great advantage of being known to the people that use

it. To this constant impediment it is proper to add the intrinsic difficulty of establishing a uniform system of weights and measures which shall satisfy the demands of civilization in scientific precision, in immediate practical applicability, and in nomenclature.

Take, for instance, the application of the decimal system, which seems at first sight simple and complete. It is unquestionably an immense improvement on the old confusion; but even here we encounter a difficulty in the circumstance, long since recognized by mathematicians, that our scale of decimal arithmetic is more the child of chance than of philosophy. I know not if any better reason can be given for its adoption than because man has everywhere reckoned by his ten fingers. On this account it is often called "natural." But, considering whether the number *ten* possesses any intrinsic excellence, convenience, or fitness, as a ratio of progression, good authorities have answered in the negative. It is the duplication of an odd number, which can furnish neither a square nor a cube, and which cannot be halved without departure from the decimal scale. In this scale we seem to see always those early days when "wild in woods the noble savage ran," and for arithmetic used fingers or toes. An *octaval* system, founded on the number eight, would have been better adapted to the divisions of material things. Among us the decimal system is adopted for money; but you all know that we are not able to carry it into rigid practice. Thus convenience, if not necessity, requires the half-dollar, the quarter-dollar, the half-dime, and the three-cent piece. In fact, eight divisions to the dollar, as prevailed in Spain, are more available in the business of life than the decimal division. The

number *eight* is capable of indefinite bisection. The progression beginning with two would proceed to four, eight, sixteen, thirty-two, sixty-four, and so on.

The decimal scale is made easy of use by the happy system of notation borrowed from the Hindoos, which might be applied equally well to an octaval scale; but at this time it would be vain to propose a change in the radix of the numerical scale. The number *ten* is the recognized starting-point, and gives its name to the scale. It only remains for us at present to follow other nations in applying it to an improved system of weights and measures.

A system of weights and measures born of philosophy, rather than of chance, is what we now seek. To this end old systems must be abandoned. A chance system cannot be universal: science is universal; therefore what is produced by science may find a home everywhere. If we consider the proper elements or characteristics of such a system, we find at least three essential conditions. First, the new system must have in itself the assurance of unvarying stability, and, to this end, it should be derived from some standard in Nature by which to correct errors creeping into the weights and measures from time or imperfect manufacture. Secondly, the parts should be divided decimally, as nearly as practice will warrant, in conformity with our arithmetic. Thirdly, it should be such as to disturb national prejudices as little as possible.

To a common observer the difficulties of finding an unvarying standard are not readily apparent. But philosophy shows that all things in Nature are undergoing change; so that there would seem to be no invariable

magnitude, the same in all countries and in all times, as Cicero pictured the great principles of Natural Law,[1] by which a lost standard on an inaccessible island might be reproduced with mathematical certainty. There is but one magnitude in Nature which, so far as we know, approximates to these requisites. I refer to the length of the pendulum vibrating seconds, which in our latitude is about 39.1 inches. This length, however, varies in travelling from the equator to the pole, and it also varies slightly under different meridians and the same latitude; but the law of variation has been determined with considerable accuracy. One element in this variation is the difference of temperature. In his report on weights and measures, Mr. Jefferson proposed that we should find our standard in the pendulum. At the same time, the French Government, just struggling to throw off ancestral institutions, conceived the idea of a new system, which, founded in science, should be common to the civilized world.

The French began not only by discarding old systems, but also by discarding a measure derived from the pendulum. They conceived the idea of measuring an arc of the earth's meridian, and finding a new unit in a subdivision of this immense span. The work was undertaken. An arc of the meridian, embracing upward of nine degrees of latitude, and extending from Dunkirk, in France, to the Mediterranean, near Barcelona, in Spain, was measured with scientific care. Illustrious names in French science, Méchain and Delambre, were engaged in the work, which proceeded, notwithstanding domestic convulsion and foreign war. The Reign of Terror at home and invasion from abroad did

[1] See, *ante*, p. 19, note.

not arrest it. Seven years elapsed before the measurements were completed, when other nations were invited to coöperate in the establishment of the new system.

The unit of measure was one ten-millionth part of the distance between the equator and the north pole thus measured. It received the name of *metre*, from the Greek, signifying *measure*. A bar of platinum, representing this length, was prepared with all possible accuracy. This bar was deposited in the archives of France as the perpetual standard. Other bars have been copied from it and distributed throughout France and in foreign countries.

There is something transcendental in the idea of this measurement of the earth in order to find a measure for daily life. It was an immense undertaking. But the conception seems to have been vast rather than practical. There is reason to believe, from later labors, that there was a serious error in the work. Thus, the distance of 10,000,000 metres from the equator to the north pole, established by the French observers, is too small by 935 yards, according to Bessel, — by 1,410 yards, according to Puissant, — and by 1,967 yards, according to Chazallon. Sir John Herschell also testifies with the authority of his great name against the accuracy of this result. If there be an error such as is supposed, then the metre ceases to be what it was called originally, one ten-millionth part of the distance from the equator to the north pole.

Even assuming that there is no error, and that the metre is precisely what it purports to be, yet it is not easy to see how the artificial standard can be corrected by recurrence to the standard in Nature. The massive work originally undertaken will not be repeated. The

astronomers of France will not verify the accuracy of the bar of platinum, which is the artificial standard, by another scientific enterprise, requiring years for completion. Therefore, for all practical purposes, the metre is really nothing else than a bar of platinum with a certain length preserved in the archives of France. It is not less arbitrary as a standard than the yard or foot, and it can be perpetuated in practice only by distribution of exact copies from the original bar, which is the assumed metre.

I have thus explained the origin and character of the metre, because I desire that the admirable system founded on it should be seen actually as it is. To my mind, it gains nothing from the theory which presided at its origin. Its unit is not to be regarded as a certain portion of the distance between the equator and the north pole, but as an artificial measure determined with peculiar care. Had the same or any other unit been selected without measurement of the earth, the metric system would not have been less beautiful or perfect.

Look now at the system. The metre, which is assumed to be one ten-millionth part of the distance from the equator to the pole, is, in fact, $39\frac{1}{3}$ inches, or 39.37 inches, in length. It is especially the unit of *length;* but it is also the unit from which are derived all measures of weight and capacity, square or cubic. It is at once foundation-stone and cap-stone. It is foundation-stone to all in the ascending series, and cap-stone to all in the descending series.

The unit of *surface measure*, or land measure, is the *are*, from the Latin *area*, and is the square of ten me-

tres, or, in other words, a square of which each side is ten metres in length.

The unit of *solid measure* is the *stere*, from the Greek, and is the cube of a metre, or, in other words, a solid mass one metre long, one metre broad, and one metre high.

The unit of *liquid measure* is the *litre*, from the Greek, and is the cube of the tenth part of the metre, which is the *decimetre;* or, in other words, it is a vessel where by interior measurement each side and the bottom are square *decimetres.*

The unit of *weight* is the *gram*, also derived from the Greek, and is the one-thousandth part of the weight of a cubic litre of distilled water at its greatest density, — this being just above the freezing-point.

Such are main elements of the metric system. But each of these has multiples and subdivisions. It is multiplied decimally upward, and divided decimally downward. The multiples are from the Greek. Thus, *deca*, ten, *hecto*, hundred, *kilo*, thousand, and *myria*, ten thousand, prefixed to *metre*, signify ten metres, one hundred metres, one thousand metres, and ten thousand metres. The subdivisions are from the Latin. Thus, *deci*, *centi*, *milli*, prefixed to *metre*, signify one tenth, one hundredth, and one thousandth of a metre. All this appears in the following table.

Metric Denominations and Values.	Equivalents in Denominations in use.
Myriametre, 10,000 metres,	6.2137 miles.
Kilometre, 1,000 metres,	.62137 mile, or 3,280 feet and 10 inches.
Hectometre, 100 metres,	328 feet and 1 inch.
Decametre, 10 metres,	393.7 inches.
METRE, 1 metre,	39.37 inches.
Decimetre, $\frac{1}{10}$ of a metre,	3.937 inches.
Centimetre, $\frac{1}{100}$ of a metre,	.3937 inch.
Millimetre, $\frac{1}{1000}$ of a metre,	.0394 inch.

These same prefixes may be applied in ascending and descending scales to the are, the litre, and the gram. Thus, for example, we have in the ascending scale, *deca*gram, *hecto*gram, *kilo*gram, and *myria*gram, — and in the descending scale, *deci*gram, *centi*gram, *milli*gram.

In this brief space you behold the whole metric system of weights and measures. What a contrast to the anterior confusion! A boy at school can master the metric system in an afternoon. Months, if not years, are required to store away the perplexities, incongruities, and inconsistencies of the existing weights and measures, and then memory must often fail in reproducing them. The mystery of compound arithmetic is essential in the calculations they require. All this is done away by the decimal progression, so that the first four rules of arithmetic are ample for the pupil.

Looking closely at the metric system, we must confess its simplicity and symmetry. Like every creation of science, it is according to rule. Master the rule and you master the system. On this account it may be acquired by the young with comparative facility, and, when once acquired, it may be used with despatch. Thus it becomes labor-saving and time-saving. Among its merits I cannot hesitate to mention the nomenclature. A superficial criticism has objected to the Greek and Latin prefixes; but this forgets that a system intended for universal adoption must discard all local or national terms. The prefixes employed are equally intelligible in all countries. They are no more French than English or German. They are common, or cosmopolitan, and in all countries they are equally suggestive in disclosing the denomination of the measure. They combine the peculiar advantages of a universal

name and a definition. The name instantly suggests the measure with exquisite precision. If these words seem scholastic or pedantic, you must bear this for the sake of their universality and defining power.

Unquestionably it is difficult for one generation to substitute a new system for that learned in childhood. Even in France the metric system was tardily adopted. Napoleon himself, on one occasion, said impatiently to an engineer who answered his inquiry in metres, "What are metres? Tell me in *toises*." It was only in 1840 that the system was definitely required in the transaction of business. Since then it has been the legal system of France. Cloth is sold by the metre; roads are measured by the kilometre; meat is sold by the kilogram, or, as it is familiarly abridged, by so many *kilos*.

It is generally admitted that the names are too long, although nobody has been able to suggest substitutes, unless we regard the various abridgments in that light. But no abridgment should be allowed to sacrifice the cosmopolitan character which belongs to the system. Thus, in England a nomenclature is proposed which would secure short names; but these would be different in each language, and entirely different from the French names. This is a mistake. The names in all languages should be identical, or so nearly alike as to be recognized at once. This may be accomplished by an abbreviated nomenclature.

For instance, we may say *met*, *ar*, *lit*, and *gram*; and, in describing the denomination, we may say, in the ascending scale, *dec*, *hec*, *kil*, and in the descending scale, *dec*, *cen*, and *mil*,— indicating respectively 10, 100, 1000, and $\frac{1}{10}$, $\frac{1}{100}$, and $\frac{1}{1000}$. Compounding these, we

should have, for example, *kilmet, killit, kilgram,* and *eenmet, cenlit, cengram.* These abbreviations might be substantially the same in all languages. They would preserve the characteristics of the unabridged terms, so that the simple mention of the measure, even in this abridged form, would disclose the proportion it bears to its fellow-measures. Previous measures have been represented by monosyllables, as grain, dram, gross, ounce, pound, stone, ton. Where a word is often repeated, in the hurry of business, it is instinctively abridged. We shall not err, if we profit by this experience, and seek to reduce the new nomenclature to its smallest proportions.

Twelve words only are required by this system. Learning these, you learn all. There are five designating the different units of length, surface, solid capacity, liquid capacity, and weight. Then there are the seven prefixes, being four in the ascending scale, expressing *multiples,* or augmentations, of the metre or other units, derived from the Greek, and three in the descending scale, expressing subdivisions, or diminutions, of the metre and other units, derived from the Latin. These twelve words contain the whole system.

In closing this chapter on the unquestionable advantages of the metric system, I must not forget that it is already the received system in the majority of countries. At the Statistical Congress assembled at Berlin in 1863, it appeared that it was adopted partly or entirely in Austria, Baden, Bavaria, Belgium, France, Hamburg, Hanover, Hesse, Mecklenburg, the Netherlands, Parma, Portugal, Sardinia, Saxony, Spain, Switzerland, Tuscany, the Two Sicilies, and Würtemberg.

Since then, Great Britain, by an Act of Parliament, has added her name to this list. The first step is taken there by making the metric system *permissive*, as is proposed in the bills before Congress. The example of Great Britain is of especial importance to us, since the commercial relations between the two countries render it essential that these should have a common system of weights and measures. On this point we cannot afford to differ from each other.

The adoption of the metric system by the United States will go far to complete the circle by which this great improvement will be assured to mankind. Here is a new agent of civilization, to be felt in all the concerns of life, at home and abroad. It will be hardly less important than the Arabic numerals, by which the operations of arithmetic are rendered common to all nations. It will help undo the primeval confusion of which the Tower of Babel was the representative.

As the first practical step to this great end, I ask the Senate to sanction the bills which have already passed the other House, and which I have reported from the special committee on the metric system. By these enactments the metric system will be presented to the American people, and will become an approved instrument of commerce. It will not be forced into use, but will be left for the present to its own intrinsic merits. Meanwhile it must be taught in schools. Our arithmetics must explain it. They who have already passed a certain period of life may not adopt it; but the rising generation will embrace it, and ever afterwards number it among the choicest possessions of an advanced civilization.

ART IN THE NATIONAL CAPITOL.

Speech in the Senate, on a Joint Resolution authorizing a Contract with Vinnie Ream for a Statue of Abraham Lincoln, July 27, 1866.

July 27th, on the last evening of the session, while the galleries were thronged, Mr. Conness, of California, called for the consideration of the joint resolution, which had already passed the House of Representatives, "authorizing a contract with Vinnie Ream for a statue of Abraham Lincoln." The following incident then occurred.

Mr. Sumner. Before that is taken up, I wish, with the consent of the Senator, that I might be allowed to put a joint resolution on its passage.

Mr. Conness. This will only occupy a moment.

Mr. Sumner. It will be debated.

Mr. Conness. Not, if you do not debate it.

Mr. Sumner. It must be debated.

Mr. Conness. Will you debate it?

Mr. Sumner. I shall debate it.

Mr. Conness. Let the Senator debate it now. I shall not give way, in that case.

Mr. Sumner. I merely wish to put a joint resolution upon its passage that will take no time.

Mr. Conness. That is asking too much.

Mr. Chandler, of Michigan, then asked Mr. Conness "to give way for a moment" to allow him to call up —— Here he was arrested by the answer, "I cannot give way to the Senator, after having refused another Senator." The joint resolution was then read: —

"*Resolved, &c.*, That the Secretary of the Interior be, and he hereby is, authorized and directed to contract with Miss Vinnie Ream for a life-size

model and statue of the late President Abraham Lincoln, to be executed by her, at a price not exceeding $10,000, one half payable on completion of the model in plaster, and the remaining half on completion of the statue in marble to his acceptance."

Mr. Lane, of Indiana, then moved to proceed with the pension bills that had already passed the other House, and this motion, after debate, prevailed, — Yeas 19, Nays 18. The pension bills and other bills were then considered, when another effort was made for the joint resolution.

Mr. Wade. I move to take up the joint resolution authorizing a contract with Vinnie Ream for a statue of Abraham Lincoln.

Mr. Sumner. I hope that will not be taken up.

Several Senators. Oh, let us vote.

Mr. Sumner. Senators say, "Oh, let us vote." The question is about giving away $10,000.

Mr. Conness. Taking it up is not giving money away, I hope.

Mr. Sumner. The question is, I say, about giving away $10,000: that is the proposition involved in this joint resolution.

Mr. Conness. For a statue.

Mr. Sumner. The Senator says, "For a statue": an impossible statue, I say, — one which cannot be made. However, I say nothing on the merits now; that will come at another time, if the resolution is taken up. I ask for the yeas and nays on the question of taking up.

The question, being taken by yeas and nays, resulted, Yeas 26, Nays 8. So the motion was agreed to, and the Senate, as in committee of the whole, resumed the consideration of the joint resolution. Mr. Sumner said: —

SOME evenings ago, Sir, I attempted to secure an appropriation of $10,000 for worthy public servants in one of the Departments of the Government. In presenting that case, it was my duty to exhibit something of their necessities. I showed you how the money was needed by them to meet the expenses of living, which, as we all know, are constantly increasing, while the value of money is decreasing. I showed you also that they were entitled to this allowance by the

service they had performed. After ample discussion, extended through several evenings, the Senate refused outright to appropriate $10,000 for distribution among public servants who, I insisted, had earned it by faithful labor. You acted on a sentiment of economy. It was urged, that, considering the numerous and heavy draughts upon the Treasury, we should not be justified in such allowance, and that, if it were made, then we should be obliged to make it in other cases, and there would be no end to the drain upon the Treasury. You all remember the fever of economy that broke out, and also the result. The proposition was voted down.

Now, Sir, a proposition is brought forward to appropriate that identical sum of $10,000 for a work of art. I speak of it in the most general way. If there were any assurance that the work in question could be worthy of so large a sum, if there were any reason to imagine that the favorite who is to be the beneficiary under this resolution were really competent to execute such a work, still, at this time and under the circumstances by which we are surrounded, I might well object to its passage, simply on reasons of economy. This argument is not out of place. I present, then, as my first objection, the consideration of economy. Do not, Sir, wastefully, inconsiderately, heedlessly give away so much. If you are in the mood of appropriation on this scale, select some of those public servants who have been discharging laborious duties on an inadequate compensation, and bestow it upon them. Be just before you are generous. Do this rather than become such sudden patrons of art. I hope that I do not treat the question too gravely.

You treated the motion to augment compensation in the State Department very gravely. I but follow your example.

But, Sir, there is another aspect to which I allude, with your pardon. I enter upon it with great reluctance. I am unwilling to utter a word that would bear hard upon any one, least of all upon a youthful artist, where sex imposes reserve, if not on her part, at least on mine; but when a proposition like this is brought forward, I am bound to meet it frankly.

Each Senator will act on his own judgment and the evidence before him. Each will be responsible to his own conscience for the vote he gives. Now, Sir, with the little knowledge I have of such things, with the small opportunities I have enjoyed of observing works of art, and with the moderate acquaintance I have formed among artists, I am bound to express a confident opinion that this candidate is not competent to produce the work you propose to order. You might as well place her on the staff of General Grant, or, putting him aside, place her on horseback in his stead. She cannot do it. She might as well contract to furnish an epic poem, or the draft of a bankrupt bill. I am pained to be constrained into these remarks; but, when you press a vote, you leave me no alternative. Admit that she may make a statue; she cannot make one that you will be justified in placing here. Promise is not performance; but what she has done thus far comes under the former head rather than the latter. Surely this National Capitol, so beautiful and interesting, and already historic, should not be opened to the rude experiment of untried talent. Only the finished artist should be admitted here.

Sir, I doubt if you consider enough the character of the edifice in which we are assembled. Possessing the advantage of an incomparable situation, it is among the first-class structures of the world. Surrounded by an amphitheatre of hills, with the Potomac at its feet, it may remind you of the Capitol in Rome, with the Alban and the Sabine hills in sight, and with the Tiber at its feet. But the situation is grander than that of the Roman Capitol. The edifice itself is not unworthy of the situation. It has beauty of form and sublimity in proportion, even if it lacks originality in conception. In itself it is a work of art. It should not receive in the way of ornamentation anything which is not a work of art. Unhappily, this rule is too often forgotten, or there would not be so few pictures and marbles about us which we are glad to recognize. But bad pictures and ordinary marbles warn us against adding to their number.

Pardon me, if I call attention for one moment to the few works of art in the Capitol which we might care to preserve. Beginning with the Vice-President's room, which is nearest, we find an excellent and finished portrait of Washington, by Peale. This is much less known than the familiar portrait by Stuart, but it is well worthy to be cherished. I never enter that room without feeling its presence. Traversing the corridors, we find ourselves in the spacious rotunda, where are four pictures by Trumbull, truly historic in character, by which great scenes live again before us. These works have a merit of their own which will always justify the place they occupy. Mr. Randolph, with ignorant levity, once characterized that which represents the signing of the Declaration of Independence

as a "shin-piece." He should have known that there is probably no picture, having so many portraits, less obnoxious to such a gibe. If these pictures do not belong to the highest art, they can never fail in interest for the patriot citizen, while the artist will not be indifferent to them. One other picture in the rotunda is not without merit: I refer to the Landing of the Pilgrims, by Weir, where there is a certain beauty of color and a religious sentiment: but this picture has always seemed to me exaggerated, rather than natural. Passing from the rotunda to the House of Representatives, we stand before a picture which, as a work of art, is perhaps the choicest of all in the Capitol. It is the portrait of Lafayette, by that consummate artist, who was one of the glories of France, Ary Scheffer. He sympathized with our institutions; and this portrait of the early friend of our country was a present from the artist to the people of the United States. Few who look at it, by the side of the Speaker's chair, are aware that it is the production of the rare genius which gave to mankind the Christus Consolator and the Francesca da Rimini.

Turning from painting to sculpture, we find further reason for caution. The lesson is taught especially by that work of the Italian Persico, on the steps of the Capitol, called by him Columbus, but called by others "a man rolling nine-pins," — for the attitude and the ball he holds suggest this game. Near to this is a remarkable group by Greenough, where the early settler is struggling with the savage; while opposite in the yard is the statue of Washington by the same artist, which has found little favor because it is nude, but which shows a mastery of art. There also

are the works of Crawford, — the *alto-rilievo* which fills the pediment over the great door of the Senate Chamber, and the statue of Liberty which looks down from the top of the dome, — attesting a genius that must always command admiration. There are other statues, by a living artist. There are also the bronze doors by Rogers, on which he labored long and well. They belong to a class of which there are only a few specimens in the world, and I have sometimes thought they might vie with those famous doors at Florence, which Michel Angelo hailed as worthy to be the gates of Paradise. Our artist has pictured the whole life of Columbus in bronze, while portraits of contemporary princes, and of great authors who have illustrated the life of the great discoverer, add to the completeness of this artistic work.

Now, Sir, the chambers of the Capitol are to open again for the reception of a work of art. It is to be the statue of our martyred President. He deserves a statue, and it should be here in Washington. But you cannot expect to have, even of him, more than one statue here in Washington. Such a repetition or reduplication would be out of place. It would be too much. There is one statue of Washington. There is also a statue of Jefferson: I refer to the excellent statue in front of the Executive Mansion, by the French sculptor, David. There is also one statue of Jackson. It is now proposed to add a statue of Lincoln. I suppose you do not contemplate two statues, or three, but only one. Who now shall make that one, to find hospitality in the National Capitol? Surely, whoever undertakes the work must be of ripe genius, with ample knowledge of art, and of unques-

tioned capacity, — the whole informed and inspired by a prevailing sympathy with the martyr and the cause for which he lived and died. Are you satisfied that this youthful candidate, without ripeness of genius or ample knowledge of art or unquestioned capacity, and not so situated as to feel the full inspiration of his life and character, should receive this remarkable trust? She has never made a statue. Shall she experiment on the historic dead, and place her attempt under this dome? I am unwilling. When the statue of that beloved President is set up here, where we shall look upon it daily, and gather from it courage and consolation, I wish it to be a work of art in truth and reality, with living features animated by living soul, so that we shall all hail it as the man immortal by his life, doubly immortal through art. Anything short of this, even if through your indulgence it finds a transient resting-place here, will be removed whenever a correct taste asserts its just prerogative.

Therefore, Sir, for the sake of economy, that you may not heedlessly lavish the national treasure, — for the sake of this Capitol, itself a work of art, that it may not have anything in the way of ornamentation which is not a work of art, — for the sake of the martyred President, whose statue should be by a finished artist, — and for the sake of art throughout the whole country, that we may not set a pernicious example, — I ask you to reject this resolution. When I speak for art generally, I open a tempting theme; but I forbear. Suffice it to say that art throughout the whole country must suffer, if Congress crowns with its patronage anything which is not truly artistic. By such patronage you will discourage where you ought to encourage.

Mr. President, I make these remarks with sincere reluctance; I am distressed in making them; but such an appropriation, engineered so vigorously, and having in its support such a concerted strength, must be met plainly and directly. Do not condemn the frankness you compel. If you wish to bestow a charity or a gift, do it openly, without pretence of any patronage bestowed upon art, or pretence of homage to a deceased President. Bring forward your resolution appropriating $10,000 to this youthful candidate. This I can deal with. I can listen to your argument for charity, and I assure you that I shall never be insensible to it. But when you propose this large sum for a work of art in the National Capitol in memory of the illustrious dead, I am obliged to consider the character of the artist. I wish it were otherwise, but I cannot help it.

The remarks of Mr. Sumner were opposed by Mr. Nesmith, of Oregon, Mr. McDougall and Mr. Conness, of California, Mr. Yates and Mr. Trumbull, of Illinois, Mr. Wade, of Ohio, and Mr. Cowan, of Pennsylvania. In the course of the debate, Mr. Edmunds, of Vermont, moved an amendment, requiring, that, before the first instalment of $5,000 should be paid, the model should be to the "acceptance" of the Secretary of the Interior. On this motion Mr. Sumner spoke again.

I THINK this amendment had better be adopted. It is only a reasonable precaution. The Senator from Wisconsin [Mr. HOWE] alluded to a contract with Mr. Stone. He is a known sculptor, whose works are at the very doors of the Senate Chamber. The committee who employed him must have been perfectly aware of his character. When they entered into a contract with him, there was no element of chance; they knew what they were contracting for. But in the pres-

ent case there is nothing but chance, if there be not the certainty of failure.

Mr. Conness. How was it in the case of Mr. Powell?

Mr. Sumner. I am speaking of the present case. One at a time, if you please. The person that you propose to contract with notoriously has never made a statue. All who have the most moderate acquaintance with art know that it is one thing to make a bust and quite another to make a statue. One may make a bust and yet be entirely unable to make a statue, — just as one may write a poem in the corner of a newspaper and not be able to produce an epic. A statue is art in one of its highest forms. There have been very few artists competent to make a statue. There is as yet but one instance that I recall of a woman reasonably successful in such an undertaking. But the eminent and precocious person to whom I refer had shown a peculiar genius very early in life, had enjoyed the rarest opportunities of culture, and had vindicated her title as artist before she attempted this difficult task. Conversing, as I sometimes have, with sculptors, I remember how they always dwell upon the difficulty of such a work. It is no small labor to set a man on his legs, with proper drapery and accessories, in stone or in bronze. Not many have been able to do it, and all these had already experience in art. Now there is no such experience here. Notoriously this candidate is without it. There is no reason to suppose that she can succeed. Therefore the Senator from Vermont [Mr. Edmunds] is wise, when he proposes, that, before the nation pays $5,000 on account, it shall have some assurance that the work is

not absolutely a failure. Voltaire was in the habit of exclaiming, in coarse Italian words, that "a woman cannot produce a tragedy." In the face of what has been accomplished by Miss Hosmer, I do not venture on the remark that a woman cannot produce a statue; but I am sure that in the present case you ought to take every reasonable precaution. Anything for this Capitol must be "above suspicion."

Sir, I did not intend, when I rose, to say anything except directly upon the motion of the Senator from Vermont; but, as I am on the floor, perhaps I may be pardoned, if I advert for one moment ——

Mr. Howe. Will the Senator allow me to ask him one question, for information?

Mr. Sumner. Certainly.

Mr. Howe. It is, whether he supposes that by the examination of a plaster model he could get any assurance that the work in marble would be satisfactory.

Mr. Sumner. Obviously; for the chief work of the artist is in the model. When this is done, the work is more than half done, — almost all done. What remains requires mechanical skill rather than genius. In Italy, where are accomplished workmen in marble, the artist leaves his model in their hands, contenting himself with a few finishing strokes of the chisel. Sometimes he does not touch the marble.

I was about to say, when interrupted, that I hoped to be pardoned, if I adverted for one moment to the onslaught made upon what I have said in this debate. I do not understand it. I do not know why Senators have given such rein to the passion for personality. I made no criticism on any Senator, and no allusion,

even, to any Senator. I addressed myself directly to the question, and endeavored to treat it with all the reserve consistent with proper frankness. Senators, one after another, have attacked me personally. The Senator from Oregon [Mr. NESMITH] seemed to riot in the business. The Senator from California [Mr. CONNESS], from whom I had reason to expect something better, caught the spirit of the other Pacific Senator. Sir, there was nothing in what I said to justify such attack. But I will not proceed in the comments their speeches invite; I turn away. There was, however, one remark of the Senator from Oregon to which I will refer. He complained that I was unwilling to patronize native art, and that I dwelt on the productions of foreign artists to the disparagement of our own.

I am at a loss for the motive of this singular misrepresentation. Let the Senator quote a sentence or word which fell from me in disparagement of native art. He cannot. I know the art of my country too well, and think of it with too much of patriotic pride. I alluded to only one foreign artist, and he was that sympathetic and gifted Frenchman who has endowed the Capitol with the portrait of Lafayette. The other artists that I praised were all of my own country. There was Rembrandt Peale, of Philadelphia, to whom we are indebted for the portrait of Washington. There was Trumbull, the companion of Washington, and one of his military staff, who, quitting the toils of war, gave himself to painting, under the inspiration of West, himself an American, and produced works which I pronounced the chief treasure of the rotunda. There also was Greenough, the earliest American sculptor, and,

until Story took the chisel, unquestionably the most accomplished of all in the list of American sculptors. He was a scholar, versed in the languages of antiquity and modern times, who studied the art he practised in the literature of every tongue. Of him I never fail to speak in praise. There also was Crawford, an American sculptor, born in New York, and my own intimate personal friend, whose early triumphs I witnessed and enjoyed. He was a true genius, versatile, fertile, bold. His short life was crowned by the honors of his profession, and he was hailed at home and abroad as a great sculptor. How can I speak of this friend of my early life except with admiration and love? I alluded also to Rogers, an American artist, from the West, — yes, Sir, from the West ——

Mr. Howard. Who was educated in Michigan.

Mr. Sumner. Educated in Michigan, — who has given to his country and to art those bronze doors, which I did not hesitate to compare with the immortal doors of Ghiberti in the Baptistery of Florence. These, Sir, were the artists to whom I referred, and such was the spirit in which I spoke. How, then, can any Senator complain that I praised foreign artists at the expense of artists at home? The remark, permit me to say, is absolutely without foundation.

It is because I would not have the art of my own country suffer, and because I would have its honors follow merit, that I oppose the largess you offer. If you really wish to set up a statue of our martyred President, select an acknowledged sculptor of your own country. Do not go to a foreigner, and do not go to the unknown. There are sculptors born among us and

already famous. Take one of them. There is Powers, an artist of rarest skill with the chisel, of exquisite finish, — perhaps with less variety and freshness than some other artists, perhaps with less originality, but having in himself many and peculiar characteristics as a remarkable artist. Summon him. He has been tried. Contracting with him, you know in advance that you will have a statue not entirely unworthy of the appropriation or of the place.

There is another sculptor of our country, whom I should name first of all, if I were to express freely my unbiased choice: I mean Story. He is the son of the great jurist, and began life with his father's mantle resting upon him. His works of jurisprudence are quoted daily in your courts. He is also a man of letters. His contributions to literature in prose and verse are in your libraries. To these he adds unquestioned fame as sculptor. In the great exhibitions of Europe his Cleopatra and his Saul have been recognized as equal in art to the best of our time, and in the opinion of many as better than the best. He brings to sculpture not only the genius of an artist, but scholarship, literature, study, and talent of every kind. Take him. Let his name be associated with the Capitol by a statue which I am sure will be the source of national pride and honor.

I might mention other sculptors of our country already known, and others giving assurance of fame. My friend who sits beside me, the distinguished Senator from New York [Mr. MORGAN], very properly reminds me of the sculptor who does so much honor to his own State. Palmer has a beautiful genius, which he has cultivated for many years with sedulous care.

He has experience. The seal of success is upon his works. Let him make your statue. There is still another artist, whose home is New York, whom I would not forget: I refer to Brown, author of the equestrian statue of Washington in New York. Of all equestrian statues in our country this is the best, unless Crawford's statue at Richmond is its rival. It need not shrink from comparison with equestrian statues in the Old World. The talent that could seat the great chief so easily in that bronze saddle ought to find welcome in this Capitol. There are yet other sculptors; but I confine my enumeration to those who have done something more than promise excellence. And now you turn from this native talent, already famous, to offer a difficult and honorable duty to an untried person, whose friends can claim for her nothing more than the uncertain promise of such excellence in sculpture as is consistent with the condition of her sex. Sir, I will not say anything more.

The amendment of Mr. Edmunds was voted down, — Yeas 7, Nays 22, — and the joint resolution passed the Senate, — Yeas 23, Nays 9.[1]

It was understood that the fair artist had received promises of support from Senators in advance. The spirit of the debate on their part belongs to the history of the case. Mr. Nesmith, of Oregon, said: —

"Mr. President, if this was a mere matter of research, I should be very much inclined to defer to the judgment of the Senator from Massachusetts; but, as it is not, and as it requires no great learning, no particular devotion to reading, to discover what is an exact imitation of Nature, I claim that my judgment on such a subject is as good as his own. . . . . He objects to this young artist, — this young scion of the West, from the same land from which Lincoln came, — a young person who manifests intuitive genius, and who is able to copy the works of Nature without having perused the immense tomes and the grand volumes of which the Senator may boast, —

[1] Statutes at Large, Vol. XIV. p. 370.

a person who was born and raised in the wilds of the West, and who is able to copy its great works."

And much more in a worse vein.

Mr. Conness, of California, adopted another style : —

"And my idea of the great Senator from Massachusetts (by which name I am very proud to call him, and which is so well deserved) is, that he is never so great as when he rises and speaks in behalf of generosity, of humanity, when he exhibits to us the intellect and the affections in that happy commingling that is the sweetest and the most beautiful rule of human life and action."

Mr. Yates, of Illinois, bore his testimony : —

"I almost feel that the Senator from Massachusetts is a barbarian [*laughter*] of the highest order, in attacking this young lady."

Mr. Cowan, of Pennsylvania, said : —

"I have the highest respect for the opinions of my friend from Massachusetts upon all classical subjects, and particularly upon those which relate to most of the fine arts; but in statuary I propose to follow the lead of my honorable friend from Ohio [Mr. WADE], who I think is infinitely superior." [*Laughter.*]

On the other hand, Mr. Howard, of Michigan, said : —

"I know, perhaps, as much of the ability of the young lady to whom it is proposed to give this job as most members of this body. I have met her frequently, as other members of this body have done; and surely she has shown no lack of that peculiar talent known commonly as 'lobbying,' in pressing forward her enterprise and bringing it to the attention of Senators."

The statue was made. Mr. Delano, Secretary of the Interior, in a communication addressed to the Vice-President, January 10, 1871, reports : "The statue in marble has been completed to my entire satisfaction, and I have this day instructed the architect of the Capitol to take charge of it."[1] The feelings of artists found expression in words of Hiram Powers, the eminent American sculptor, at Florence, which appeared in the New York *Evening Post* : —

"I suppose that you, as well as all other well-wishers for art in our country, have been mortified, if not really disgusted, at the success of the Vinnie Ream statue of our glorious old Lincoln. An additional five thou-

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 13.

sand dollars paid for this caricature! ——— ——— was bad enough; but this last act of Congress, in favor of a female lobby member, who has no more talent for art than the carver of weeping-willows on tombstones, really fills the mind of the genuine student of art (who thinks that years of profound study of art as a science are necessary) with despair."

THE ONE MAN POWER *vs.* CONGRESS.

THE PRESENT SITUATION.

Address at the Opening of the Annual Lectures of the Parker Fraternity, at the Music Hall, Boston, October 2, 1866.

ADDRESS.

MR. PRESIDENT, — More than a year has passed since I last had the honor of addressing my fellow-citizens of Massachusetts. I then dwelt on what seemed the proper policy towards the States recently in rebellion, — insisting that it was our duty, while renouncing Indemnity for the past, to obtain at least Security for the future; and this security, I maintained, could be found only in exclusion of ex-Rebels from political power, and in irreversible guaranties especially applicable to the national creditor and the national freedman.[1] During intervening months, the country has been agitated by this question, which was perplexed by unexpected difference between the President and Congress. The President insists upon installing ex-Rebels in political power, and sets at nought the claim of guaranties and the idea of security for the future, while he denies to Congress any control over the question, taking it all to himself. Congress asserts control, and endeavors to exclude ex-Rebels from political power and establish guaranties, to the end that there may be security for the future. Meanwhile the States recently in rebellion, with the exception of Tennessee, are without representation. Thus stands the case.

[1] Speech at the Republican State Convention, September 14, 1865: *Ante*, Vol. XII. pp. 305, seqq.

The two parties are the President, on the one side, and the people of the United States in Congress assembled, on the other side, — the first representing the Executive, the second representing the Legislative. It is *The One Man Power* vs. *Congress*. Of course, each performs its part in the government; but until now it has always been supposed that the legislative gave law to the executive, and not that the executive gave law to the legislative. This irrational assumption becomes more astonishing, when it is considered that the actual President, besides being the creature of circumstance, is inferior in ability and character, while the House of Representatives is eminent in both respects. A President who has already sunk below any other President, even James Buchanan, madly undertakes to rule a House of Representatives which there is reason to believe is the best that has sat since the formation of the Constitution. Looking at the two parties, we are tempted to exclaim, Such a President dictating to such a Congress! It was said of Gustavus Adolphus, that he drilled the Diet of Sweden to vote or be silent at the word of command; but Andrew Johnson is not Gustavus Adolphus, and the American Congress is not the Diet of Sweden.

The question at issue is one of the vastest ever presented for practical decision, involving the name and weal of the Republic at home and abroad. It is not a military question; it is a question of statesmanship. We are to secure by counsel what was won by war. Failure now will make the war itself a failure; surrender now will undo all our victories. Let the President prevail, and straightway the plighted faith of the

Republic will be broken, — the national creditor and the national freedman will be sacrificed, — the Rebellion itself will flaunt its insulting power, — the whole country, in length and breadth, will be disturbed, — and the Rebel region will be handed over to misrule and anarchy. Let Congress prevail, and all this will be reversed: the plighted faith of the Republic will be preserved; the national creditor and the national freedman will be protected; the Rebellion itself will be trampled out forever; the whole country, in length and breadth, will be at peace; and the Rebel region, no longer harassed by controversy and degraded by injustice, will enjoy the richest fruits of security and reconciliation. To labor for this cause may well tempt the young and rejoice the old.

And now, to-day, I again protest against any present admission of ex-Rebels to the great partnership of this Republic, and I renew the claim of irreversible guaranties, especially applicable to the national creditor and the national freedman, — insisting now, as I did a year ago, that it is our duty, while renouncing Indemnity for the past, to obtain at least Security for the future. At the close of a terrible war, wasting our treasure, murdering our fellow-citizens, filling the land with funerals, maiming and wounding multitudes whom Death had spared, and breaking up the very foundations of peace, our first duty is to provide safeguards for the future. This can be only by provisions, sure, fundamental, and irrepealable, fixing forever the results of the war, the obligations of the Government, and the equal rights of all. Such is the suggestion of common prudence and of self-defence, as well as of common honesty. To this end we must make haste slowly.

States which precipitated themselves out of Congress must not be permitted to precipitate themselves back. They must not enter the Halls they treasonably deserted, until we have every reasonable assurance of future good conduct. We must not admit them, and then repent our folly. The verses in which the satirist renders the quaint conceit of the old Parliamentary orator, verses revived by Mr. Webster, and on another occasion used by myself, furnish the key to our duty: —

> "I hear a lion in the lobby roar:
> Say, Mr. Speaker, shall we shut the door,
> And keep him there? or shall we let him in,
> To try if we can turn him out again?" [1]

I am against letting the monster in, until he is no longer terrible in mouth or paw.

But, while holding this ground of prudence, I desire to disclaim every sentiment of vengeance or punishment, and also every thought of delay or procrastination. Here I do not yield to the President, or to any other person. Nobody more anxious than I to see this chasm closed forever.

There is a long way and a short way. There is a long time and a short time. If there be any whose policy is for the longest way or for the longest time, I am not of the number. I am for the shortest way, and also for the shortest time. And I object to the interference of the President, because, whether intentionally or unintentionally, he interposes delay and keeps the chasm open. More than all others, the President, by officious assumptions, has lengthened the way and lengthened the time. Of this there can be no doubt.

[1] Bramston, Art of Polities, 162–165. See, *ante*, Vol. VIII. p. 212.

From all quarters we learn that after the surrender of Lee the Rebels were ready for any terms, if they could escape with life. They were vanquished, and they knew it. The Rebellion was crushed, and they knew it. They hardly expected to save a small fraction of property. They did not expect to save political power. They were too sensible not to see that participants in rebellion could not pass at once into the copartnership of government. They made up their minds to exclusion. They were submissive. There was nothing they would not do, *even to the extent of enfranchising the freedmen and providing for them homesteads.* Had the National Government taken advantage of this plastic condition, it might have stamped Equal Rights upon the whole people, as upon molten wax, while it fixed the immutable conditions of permanent peace. The question of Reconstruction would have been settled before it arose. It is sad to think that this was not done. Perhaps in all history there is no instance of such an opportunity lost. Truly should our country say in penitential supplication, "We have left undone those things which we ought to have done, and we have done those things which we ought not to have done."

Do not take this on my authority. Listen to those on the spot, who have seen with their own eyes. A brave officer of our army writes from Alabama: —

"I believe the mass of the people could have been easily controlled, if none of the excepted classes had received pardon. These classes did not expect anything more than life, and even feared for that. Let me condense the whole subject. At the surrender, the South could have been moulded at will; but it is now as stiff-necked and rebellious as ever."

In the same vein another officer testifies from Texas: —

"There is one thing, however, that is making against the speedy return of quietness, not only in this State, but throughout the entire South, *and that is the Reconstruction policy of President Johnson.* It is doing more to unsettle this country than people who are not practical observers of its workings have any idea of. Before this policy was made known, the people were prepared to accept anything. They expected to be treated as rebels, — their leaders being punished, and the property of others confiscated. But the moment it was made known, all their assurance returned. Rebels have again become arrogant and exacting; Treason stalks through the land unabashed."

This testimony might be multiplied indefinitely. From city and country, from highway and by-way, there is but one voice. When, therefore, the President, in opprobrious terms, complains of Congress as interposing delay, I reply to him: "No, Sir, it is you, who, by unexpected and most perverse assumption, have put off the glad day of security and reconciliation, so much longed for. It is you who have inaugurated anew that malignant sectionalism, which, so long as it exists, will keep the Union divided in fact, if not in name. Sir, you are the Disunionist."

Glance, if you please, at that Presidential policy — so constantly called "my policy" — now so vehemently pressed upon the country, and you will find that it pivots on at least two alarming blunders, as can be easily seen: *first,* in setting up the One Man Power as the source of jurisdiction over this great question; and, *secondly,* in using the One Man Power for the restoration of Rebels to place and influence, so that

good Unionists, whether white or black, are rejected, and the Rebellion itself is revived in the new governments. Each of these assumptions is an enormous blunder. You see that I use a mild term to characterize such a double-headed usurpation.

Pray, Sir, where in the Constitution do you find any sanction of the One Man Power as source of this extraordinary jurisdiction? I had always supposed that the President was the Executive,—bound to see the laws faithfully executed, but not empowered to make laws. The Constitution expressly says: "The Executive power shall be vested in a President of the United States of America." But the Legislative power is elsewhere. According to the Constitution, "All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And yet the President has assumed legislative power, even to the extent of making laws and constitutions for States. You all know, that, at the close of the war, when the Rebel States were without lawful governments, he assumed to supply them. In this business of Reconstruction he assumed to determine who should vote, and also to affix conditions for adoption by the conventions. Look, if you please, at the character of this assumption. The President, from the Executive Mansion at Washington, reaches his long executive arm into certain States and dictates constitutions. Surely here is nothing executive; it is not even military. It is legislative, pure and simple, and nothing else. It is an attempt by the One Man Power to do what can be done only by the legislative branch of Government.

And yet the President, perversely absorbing to himself all power over the reconstruction of the Rebel States, insists that Congress must accept his work without addition or subtraction. He can impose conditions: Congress cannot. He can determine who shall vote: Congress cannot. His jurisdiction is not only complete, but exclusive. If all this be so, then has our President a most extraordinary power, never before dreamed of. He may exclaim, with Louis the Fourteenth, "The State, it is I," while, like this magnificent king, he sacrifices the innocent, and repeats that fatal crime, the revocation of the Edict of Nantes. His whole "policy" is "revocation" of all that has been promised and all we have a right to expect.

Here it is well to note a distinction, not without importance in the issue between the President and Congress. Nobody doubts that the President may, during war, govern any conquered territory as commander-in-chief, and for this purpose detail any military officer as military governor. But it is one thing to govern a State temporarily by military power, and quite another thing to create a constitution for a State which shall continue *when the military power has expired.* The former is a military act, and belongs to the President; the latter is a civil act, and belongs to Congress. On this distinction I stand; and this is not the first time that I have asserted it. Of course, governments set up in this illegitimate way are necessarily illegitimate, except so far as they acquire validity from time or subsequent recognition. It needs no learned Chief Justice of North Carolina solemnly to declare this. It is manifest from the nature of the case.

But this illegitimacy becomes still more manifest,

when it is known that the constitutions which the President orders and tries to cram upon Congress have never been submitted to popular vote. Each is the naked offspring of an illegitimate convention called into being by the President, in the exercise of illegitimate power.

There is another provision of the Constitution, by which, according to a judgment of the Supreme Court of the United States, this question is referred to Congress, and not to the President. I refer to the provision that "*the United States* shall guaranty to every State in this Union a republican form of government." On these words Chief Justice Taney, speaking for the Supreme Court, has adjudged, that "it rests with Congress to decide what government is the established one in a State; for, as *the United States* guaranty to each State a republican government, *Congress must necessarily decide what government is established in the State,* before it can determine whether it is republican or not"; and that "unquestionably a military government established as the permanent government of the State would not be a republican government, and it would be the duty of Congress to overthrow it."[1] But the President sets at nought this commanding text, reinforced by the positive judgment of the Supreme Court, and claims this extraordinary power for himself, to the exclusion of Congress. He is "the United States." In him the Republic is manifest. He can do all; Congress nothing.

And now the whole country is summoned by the President to recognize State governments created by constitutions thus illegitimate in origin and character. Without considering if they contain the proper ele-

[1] Luther *v.* Borden et al., 7 Howard, R., 42, 45.

ments of security for the future, or if they are republican in form, and without any inquiry into the validity of their adoption, — nay, in the very face of testimony showing that they contain no elements of security for the future, that they are not republican in form, and that they have never been adopted by the loyal people, — we are commanded to accept them; and when we hesitate, the President, himself leading the outcry, assails us with angry vituperation, blunted, it must be confessed, by coarseness without precedent and without bound. It is well that such a cause has such an advocate.

Thus setting up the One Man Power as a source of jurisdiction, the President has committed a blunder of Constitutional Law, proceeding from an immense egotism, in which the little pronoun "I" plays a gigantic part. It is "*I*" vs. *The People of the United States in Congress assembled.* On this unnatural blunder I might say more; but I have said enough. My present purpose is accomplished, if I make you see it clearly.

The other blunder is of a different character. It is giving present power to ex-Rebels, at the expense of constant Unionists, white or black, and employing them in the work of Reconstruction, so that the new governments continue to represent the Rebellion. This same blunder, when committed by one of the heroes of the war, was promptly overruled by the President himself; but Andrew Johnson now does what Sherman was not allowed to do. The blunder is strange and unaccountable.

Here the evidence is constant and cumulative. It

begins with his proclamation for the reconstruction of North Carolina. Holden was appointed Provisional Governor, — an officer unknown to law, and for whom there was no provision, — although it was notorious that he had been a member of the Convention which adopted the Act of Secession, and that he signed it. Then came Perry, Provisional Governor of South Carolina, who, besides holding a judicial station under the Rebel Government, was one of its Commissioners of Impressments. I have a Rebel newspaper containing one of his advertisements in the latter character. There also was Parsons, Provisional Governor of Alabama, who in 1863 introduced into the Legislature of that State formal resolutions tendering to Jefferson Davis "hearty thanks for his good labors in the cause of our common country, together with the assurance of continued support," — and afterwards, in 1864, denounced our national debt, exclaiming in the Legislature: "Does any sane man suppose we will consent to pay their [the United States] war debt, contracted in sending armies and navies to burn our towns and cities, to lay waste our country, — whose soldiers have robbed and murdered our peaceful inhabitants?" Such were the agents appointed by the President to institute loyal governments. But this selection becomes more strange and unaccountable, when it is considered that all this was done in defiance of law.

There is a recent enactment of Congress requiring that no person shall be appointed to any office of the United States, unless such office has been created by law.[1] And there is another enactment of Congress, providing that all officers, civil or military, before entering

[1] Act, February 9, 1863: Statutes at Large, Vol. XII. p. 646.

upon their official duties or receiving any salary or compensation, shall take an oath declaring that they have held no office under the Rebellion or given any aid thereto.[1] In face of these enactments, which are sufficiently explicit, the President began his work of Reconstruction by appointing civilians to an office absolutely unknown to law, when besides they could not take the required oath of office; and to complete the disregard of Congress, he fixed their salary, and paid it out of the funds of the War Department.

Of course such proceeding was an instant encouragement and license to all ex-Rebels, no matter how much blood was on their hands. Rebellion was at a premium. It was easy to see, that, if these men were good enough to be governors of States, in defiance of Congress, all others in the same political predicament would be good enough for inferior offices. And it was so. From top to bottom these States were organized by men who had been warring on their country. Ex-Rebels were appointed by the governors or chosen by the people everywhere. Ex-Rebels sat in Conventions and in Legislatures. Ex-Rebels became judges, justices of the peace, sheriffs, and everything else, — while the faithful Unionist, white or black, was rejected. As with Cordelia, his love was "according to his bond, nor more nor less"; but all this was of no avail. How often during the war have I pleaded for such patriots, and urged to every effort for their redemption! — and now, when our arms have prevailed, it is they who are cast down, while the enemies of the Republic are exalted. The pirate Semmes returns from his ocean cruise to be chosen Probate Judge, — leaping from the

[1] Act, July 2, 1862 : Statutes at Large, Vol. XII. p. 502.

deck of the Ship Alabama to the judicial bench of the State Alabama. In New Orleans the Rebel mayor at the surrender to the national flag is once more mayor, and employs his regained power in the terrible massacre which rises in judgment against the Presidential policy. Persons are returned to Congress whose service in the Rebellion makes it impossible for them to take the oath of office, — as in the case of Georgia, which selects as Senators Herschel V. Johnson, a Senator of the Rebel Congress, and Alexander H. Stephens, Vice-President of the Rebellion. These are instances; but from these learn all.

There is nothing within reach of the President which he has not lavished on ex-Rebels. The power of pardon and amnesty, like the power of appointment, has been used for them, wholesale and retail. It would have been easy to affix a condition to every pardon, requiring, that, before it took effect, the recipient should carve out of his estate a homestead for every one of his freedmen, and thus secure to each what they all covet so much, a piece of land. But the President did no such thing, although, in the words of the old writ, "often requested so to do." Such a condition would have helped the loyal freedmen, rather than the rebel master. In the same spirit, while undertaking to determine who shall be voters, all colored persons, howsoever loyal, were disfranchised, while all white persons, except certain specified classes, although black with rebellion, were constituted voters on taking a simple oath of allegiance, thus investing ex-Rebels with a prevailing power.

Partisans of the Presidential "policy" are in the habit of declaring it a continuation of the policy of

the martyred Lincoln. This is a mistake. Would that he could rise from his bloody shroud to repel the calumny! Happily, he has left his testimony behind, in words which all who have ears to hear can hear. The martyr presented the truth bodily, when he said, in suggestive metaphor, that we must "build up from the sound materials"; but his successor insists upon building from materials rotten with treason and gaping with rebellion. On another occasion, the martyr said that "an attempt to guaranty and protect a *revived* State government, constructed in whole or *in preponderating part* from *the very element* against whose hostility and violence it is to be protected, is *simply absurd*."[1] But this is the very thing the President is now attempting. He is constructing State governments, not merely in preponderating part, but *in whole*, from the hostile element. Therefore he departs openly from the policy of the martyred Lincoln.

The martyr says to his successor that the policy adopted is "simply absurd." He is right, although he might say more. Its absurdity is too apparent. It is as if, in abolishing the Inquisition, the inquisitors had been continued under another name, and Torquemada had received a fresh license for cruelty. It is as if King William, after the overthrow of James the Second, had made the infamous Jeffreys Lord Chancellor. Common sense and common justice cry out against the outrage; and yet this is the Presidential "policy" now so passionately commended to the American people.

A state, according to Aristotle, is a "copartnership," and I accept the term as especially applicable to our government. And now the President, in the exer-

[1] Annual Message, December 8, 1863.

cise of the One Man Power, decrees that communities lately in rebellion shall be taken at once into our "copartnership." I object to the decree as dangerous to the Republic. I am not against pardon, clemency, or magnanimity, except where they are at the expense of good men. I trust that they will always be practised; but I insist that recent rebels shall not be admitted, without proper precautions, to the business of the firm. And I insist also that the One Man Power shall not be employed to force them into the firm.

Such are two pivotal blunders. It is not easy to see how he has fallen into these, so strong were his early professions the other way. The powers of Congress he had distinctly admitted. Thus, as early as 24th July, 1865, he had sent to Sharkey, acting by his appointment as Provisional Governor of Mississippi, this despatch: "It must, however, be distinctly understood that the restoration to which your proclamation refers *will be subject to the will of Congress.*" Nothing could be more positive. And he was equally positive against the restoration of Rebels to power. You do not forget, that, in accepting his nomination as Vice-President, he rushed forward to declare that the Rebel States must be remodelled, that confiscation must be enforced, and that Rebels must be excluded from the work of Reconstruction. His language was plain and unmistakable. Announcing that "government must be fixed on the principles of *eternal justice*," he declared, that, "if the man who gave his influence and his means to destroy the Government should be permitted to participate in the great work of reorganization, then all the precious

blood so freely poured out will have been wantonly spilled, and all our victories go for nought." True, very true. Then, in words of surpassing energy, he cried out, that "the great plantations must be seized and divided into small farms," and that "traitors should take a back seat in the work of restoration." Perhaps the true rule was never expressed with more homely and vital force than in this last saying, often repeated in different forms, "For Rebels, back seats." Add that other saying, as often repeated, "Treason must be made odious," and you have two great principles of just reconstruction, once proclaimed by the President, but now practically disowned by him.

You will ask how the President fell. This is hard to say, certainly, without much plainness of speech. Mr. Seward openly confesses that he counselled the present fatal "policy." Unquestionably the Blairs, father and son, did the same. So also, I doubt not, did Mr. Preston King. It is easy to see that Mr. Seward was not a wise counsellor. This is not his first costly blunder. In formal despatches he early announced that "the rights of the States, and the condition of every human being in them, will remain subject to exactly the same laws and forms of administration, whether the revolution shall succeed or whether it shall fail."[1] And now he labors for the fulfilment of his own prophecy. Obviously, from the beginning, he has failed to comprehend the Rebellion, while in nature he is abnormal and eccentric, jumping like the knight on the chess-board, rather than moving on straight lines. Undoubtedly

[1] Mr. Seward to Mr. Dayton, April 22, 1861: Executive Documents, 37th Cong. 2d Sess., Senate, No. I. p. 198.

the influence of such a man over the President has not been good. But the President himself is his own worst counsellor, as he is his own worst defender. He does not open his mouth without furnishing evidence against himself.

The brave words with which he accepted his nomination as Vice-President resounded through the country. He was elected. Then followed two scenes, each of which filled the people with despair. The first was of the new Vice-President taking the oath of office — in the presence of the foreign ministers, the judges of the Supreme Court, and the Senate — while in such a condition that his attempted speech became trivial and incoherent, and he did not know the name of the Secretary of the Navy, who is now the devoted supporter of his policy, as he has been his recent travelling companion. One month and one week thereafter President Lincoln was assassinated. The people, wrapt in affliction at the great tragedy, trembled as they beheld a drunken man ascend the heights of power. But they were generous and forgiving, — almost forgetful. He was our President, and hands were outstretched to welcome and sustain him. His early utterances as President, although commonplace, loose, and wordy, gave assurance that the Rebellion and its authors would find little favor. Treason was to be made odious.

At this time my own personal relations with him commenced. I had known him slightly while he was in the Senate; but I lost no time in seeing him after he became President. He received me kindly. I hope that I shall not err, if I allude briefly to what passed between us. You are my constituents, and I wish you

to know the Presidential mood at that time, and also what your representative attempted.

Being in Washington during the first month of the new Administration, destined to fill such an unhappy place in history, I saw the President frequently, at the private house he then occupied, or at his office in the Treasury. He had not yet taken possession of the Executive Mansion. The constant topic was "Reconstruction," which was considered in every variety of aspect. More than once I ventured to press the duty and renown of carrying out the principles of the Declaration of Independence, and of founding the new governments on the consent of the governed, without distinction of color. To this earnest appeal he replied, as I sat with him alone, in words which I can never forget: "On this question, Mr. Sumner, there is no difference between us; you and I are alike." Need I say that I was touched to the heart by this annunciation, which seemed to promise a victory without a battle? Accustomed to controversy, I saw clearly, that, if the President declared himself for the Equal Rights of All, the good cause must prevail without controversy. Expressing to him my joy and gratitude, I remarked that there should be no division in the great Union party, — that no line should be run through it, on one side of which would be gentlemen calling themselves "the President's friends," but we should be kept all together as one seamless garment. To this he promptly replied, "I mean to keep you all together." Nothing could be better. We were to be kept all together on the principle of Equal Rights. As I walked away, that evening, the battle of my life seemed ended, while the Republic rose before me, refulgent in the blaze of assured freedom, an example to the nations.

On another occasion, during the same period, the case of Tennessee was discussed. I expressed the earnest hope that the President would use his influence directly for the establishment of impartial suffrage in that State, saying that in this way Tennessee would be put at the head of the returning column and be made an example, — in one word, that all the other States would be obliged to dress on Tennessee. The President replied, that, if he were at Nashville, he would see this accomplished. I could not help rejoining, that he need not be at Nashville, for at Washington his hand was on the long end of the lever with which he could easily move all Tennessee, — referring, of course, to the powerful, but legitimate, influence the President might exercise in his own State by the expression of his desires. Let me confess that his hesitation disturbed me; but I attributed it to unnecessary caution, rather than to infidelity. He had been so positive with me, how could I suspect him?

At other times the conversation was renewed. Such was my interest in the question, that I could not see the President without introducing it. As I was about to return home, I said that I desired, even at the risk of repetition, to make some parting suggestions on the constant topic, and that, with his permission, I would proceed point by point, as was the habit of the pulpit in former days. He smiled, and observed pleasantly, "Have I not always listened to you?" I replied, "You have; and I am grateful." After remarking that the Rebel region was still in military occupation, and that it was the plain duty of the President to use his temporary power for the establishment of correct principles, I proceeded to say: "First, see to it that no news-

paper is allowed which is not thoroughly loyal, and does not speak well of the National Government and of Equal Rights"; and here I reminded him of the saying of the Duke of Wellington, that in a place under martial law an unlicensed press is as impossible as on the deck of a ship of war. "Secondly, let the officers that you send, as military governors or otherwise, be known for devotion to Equal Rights, so that their names alone will be a proclamation, while their simple presence will help educate the people"; and here I mentioned Major-General Carl Schurz, who still held his commission in the army, as such a person. "Thirdly, encourage the population to resume the profitable labors of agriculture, commerce, and manufactures without delay, — but for the present to avoid politics. Fourthly, keep the whole region under these good influences, and at the proper moment hand over the subject of Reconstruction, with the great question of Equal Rights, to the judgment of Congress, where it belongs." All this the President received with perfect kindness, and I mention this with the more readiness because I remember to have seen in the papers a very different statement.

Only a short time afterwards there was a change, which seemed like a somersault or an apostasy; and then ensued a strange sight. Instead of faithful Unionists, recent Rebels thronged the Presidential antechambers, rejoicing in new-found favor. They made speeches at the President, and he made speeches at them. A mutual sympathy was manifest. On one occasion the President announced himself a "Southern man" with "Southern sympathies," thus quickening that sectional flame which good men hoped to see

quenched forever. Alas! if, after all our terrible sacrifices, we are still to have a President who does not know how to spurn every sectional appeal and make himself representative of all! Unhappily, whatever the President said or did was sectional. He showed himself constantly a sectionalist. Instead of telling the ex-Rebels who thronged the Presidential antechambers, as he should have done, that he was their friend, that he wished them well from the bottom of his heart, that he longed to see their fields yield an increase, with peace in all their borders, and that, to this end, he counselled them to pursue agriculture, commerce, and manufactures, and for the present to say nothing about politics, — instead of this, he sent them away talking and thinking of nothing but politics, and frantic for the reëstablishment of a sectional power. Instead of designating officers of the army as military governors, which I had supposed he would do, he appointed ex-Rebels, who could not take the oath required by Congress of all officers of the United States, and they in turn appointed ex-Rebels to office under them; so that participation in the Rebellion found reward, and treason, instead of being made odious, became the passport to power. Everywhere ex-Rebels came out of hiding-places. They walked the streets defiantly, and asserted their old domination. Under auspices of the President, a new campaign was planned against the Republic, and they who failed in open war now sought to enter the very citadel of political power. Victory, purchased by so much loyal blood and treasure, was little better than a cipher. Slavery itself revived in the spirit of Caste. Faithful men who had been trampled down by the Rebellion were trampled down still more

by these Presidential governments. For the Unionist there was no liberty of the press or liberty of speech, and the lawlessness of Slavery began to rage anew.

Every day brought tidings that the Rebellion was reappearing in its essential essence. Amidst all professions of submission, there was immitigable hate to the National Government, and prevailing injustice to the freedman. This was last autumn. I was then in Boston. Moved by desire to arrest this fatal tendency, I appealed by letter to members of the Cabinet, entreating them to stand firm against a "policy" which promised nothing but disaster. As soon as the elections were over, I appealed directly to the President himself, by a telegraphic despatch, as follows: —

"Boston, November 12, 1865.

"To the President of the United States, Washington.

"As a faithful friend and supporter of your administration, I most respectfully petition you to suspend for the present your policy towards the Rebel States. I should not present this prayer, if I were not painfully convinced that thus far it has failed to obtain any reasonable guaranties for that security in the future which is essential to peace and reconciliation. To my mind, it abandons the freedmen to the control of their ancient masters, and leaves the national debt exposed to repudiation by returning Rebels. The Declaration of Independence asserts the equality of all men, and that rightful government can be founded only on the consent of the governed. I see small chance of peace, unless these great principles are practically established. Without this, the house will continue divided against itself.

"Charles Sumner,
"*Senator of the United States.*"

Reaching Washington Saturday evening, immediately

before the opening of the last session of Congress, I lost no time in seeing the President. I was with him that evening three hours. I found him changed in temper and purpose. How unlike that President who, only a few days after arrival at power, made me feel so happy in the assurance of agreement on the great question! No longer sympathetic, or even kindly, he was harsh, petulant, and unreasonable. Plainly, his heart was with ex-Rebels. For the Unionist, white or black, who had borne the burden of the day, he had little feeling. He would not see the bad spirit of the Rebel States, and insisted that the outrages there were insufficient to justify exclusion from Congress. The following dialogue ensued.

THE PRESIDENT. Are there no murders in Massachusetts?

MR. SUMNER. Unhappily, yes, — sometimes.

THE PRESIDENT. Are there no assaults in Boston? Do not men there sometimes knock each other down, so that the police is obliged to interfere?

MR. SUMNER. Unhappily, yes.

THE PRESIDENT. Would you consent that Massachusetts, on this account, should be excluded from Congress?

MR. SUMNER. No, Mr. President, I would not.

And here I stopped, without remarking on the entire irrelevancy of the inquiry. I left the President that night with the painful conviction that his whole soul was set as flint against the good cause, and that by the assassination of Abraham Lincoln the Rebellion had vaulted into the Presidential chair. Jefferson Davis was then in the casemates at Fortress Monroe, but Andrew Johnson was doing his work.

> "Ah! what avails it, ...
> If the gulled conqueror receives the chain,
> And flattery subdues, when arms are vain?"

From this time forward I was not in doubt as to his "policy," which asserted a condition of things in the Rebel region inconsistent with the terrible truth. It was, therefore, natural that I should characterize one of his messages, covering over the enormities there, as "whitewashing." This mild term was thought by some too strong. Subsequent events have shown that it was too weak. The whole Rebel region is little better than a "whited sepulchre." It is that saddest of all sepulchres, the sepulchre of Human Rights. The dead men's bones are the remains of faithful Union soldiers, dead on innumerable fields, or stifled in the pens of Andersonville and Belle Isle, — also of constant Unionists, white and black, whom we are sacredly bound to protect, now murdered on highways and by-ways, or slaughtered at Memphis and New Orleans. The uncleanness is injustice, wrong, and outrage, having a loathsome stench; and the President is engaged in "whiting" over these things, so that they shall not be seen by the American people. To do this, he garbles a despatch of Sheridan, and abuses the hospitality of the country by a travelling speech, where every word, not foolish, vulgar, and vindictive, is a vain attempt at "whitewashing."

Meanwhile the Presidential madness is more than ever manifest. It has shown itself in frantic effort to defeat the Constitutional Amendment proposed by Congress for adoption by the people. By this Amendment certain safeguards are established. Citizenship is defined, and protection is assured at least in what are called civil rights. The basis of representation is fixed on the number of voters, so that, if colored citizens are

not allowed to vote, they will not by their numbers contribute to representative power, and one voter in South Carolina will not be able to neutralize two voters in Massachusetts or Illinois. Ex-Rebels who had taken an oath to support the Constitution are excluded from office, National or State. The National debt is guaranteed, while the Rebel debt and all claim for slaves are annulled. All these essential safeguards are rudely rejected by the President.

The madness that would set aside provisions so essentially just, whose only error is inadequacy, has broken forth naturally in brutal utterance, where he has charged persons by name with seeking his life, and has stimulated a mob against them. It is difficult to surpass the criminality of this act. The violence of the President has provoked violence. His words were dragon's teeth, which have sprung up armed men. Witness Memphis; witness New Orleans. Who can doubt that the President is author of these tragedies? Charles the Ninth of France was not more completely author of the Massacre of St. Bartholomew than Andrew Johnson is author of the recent massacres now crying out for judgment. History records that the guilty king was pursued in the silence of night by the imploring voices of murdered men, mingled with curses and imprecations, while ghosts stalked through his chamber, until he sweated blood from every pore; and when he came to die, his soul, wrung with the tortures of remorse, stammered out, "Ah, nurse, my good nurse! what blood! what murders! Oh, what bad counsels I followed! Lord God, pardon me! have mercy on me!" Like causes produce like effects. The blood at Memphis and New Orleans must cry out until

heard, and a guilty President may suffer the retribution which followed a guilty king.

The evil he has done already is on such a scale that it is impossible to measure it, unless as you measure an arc of the globe. I doubt if in all history there is any ruler who in the same brief space of time has done so much. There have been kings and emperors, proconsuls and satraps, who have exercised tyrannical power; but facilities of communication now lend swiftness and extension to all evil influences, so that the President is able to do in a year what in other days would have taken a life. Nor is the evil confined to any narrow spot. It is coextensive with the Republic. Next to Jefferson Davis stands Andrew Johnson as its worst enemy. The whole country has suffered; but the Rebel region has suffered most. He should have sent peace; instead, he sent a sword. Behold the consequences!

In support of a cruel "policy" he has not hesitated to use his enormous patronage. President Lincoln said, familiarly, that, as the people had continued him in office, he supposed they meant that others should be continued also; and he refused to make removals. But President Johnson announces "rotation in office"; and then, warming in anger against all failing to sustain his "policy," he roars that he will "kick them out." Men appointed by the martyred Lincoln are to be "kicked out" by the successor, while he pretends to sustain the policy of the martyr. The language of the President is most suggestive. He "kicks" the friends of his well-loved predecessor; and he also "kicks" the careful counsel of that well-loved predecessor, that we must "build up from the sound materials."

That I may give practical direction to these remarks, let me tell you plainly what must be done. In the first place, Congress must be sustained in its conflict with the One Man Power; and, in the second place, ex-Rebels must not be hurried back to power. Bearing in mind these two things, the way is easy. Of course, the Constitutional Amendment must be adopted. As far as it goes, it is well; but it does not go far enough. More is necessary. Impartial suffrage must be established. A homestead must be secured to every freedman, if in no other way, through the pardoning power. If to these is added education, there will be a new order of things, with liberty of the press, liberty of speech, and liberty of travel, so that Wendell Phillips may speak freely in Charleston or Mobile. There is an old English play under the name of "The Four P's." Our present desires may be symbolized by four E's, — standing for Emancipation, Enfranchisement, Equality, and Education. Securing these, all else will follow.

I can never cease to regret that Congress hesitated by proper legislation to assume temporary jurisdiction over the whole Rebel region. To my mind the power was ample and unquestionable, whether in the exercise of belligerent rights or in the exercise of rights directly from the Constitution itself. In this way everything needful might have been accomplished. Through this just jurisdiction the Rebel communities might have been fashioned anew, and shaped to loyalty and virtue. The President lost a great opportunity at the beginning. Congress has lost another. But it is not too late. If indisposed to assume this jurisdiction by an Enabling Act constituting provisional governments, there are many things Congress may do, acting indirectly or di-

rectly. Acting indirectly, it may insist that Emancipation, Enfranchisement, Equality, and Education shall be established as conditions precedent to the recognition of any State whose institutions have been overthrown by rebellion.[1] Acting directly, it may, by Constitutional Amendment, or by simple legislation, fix all these forever.

You are aware that from the beginning I have insisted upon Impartial Suffrage as the only certain guaranty of security and reconciliation. I renew this persistence, and mean to hold on to the end. Every argument, every principle, every sentiment is in its favor. But there is one reason which at this moment I place above all others: it is *the necessity of the case.* You require the votes of colored persons in the Rebel States to sustain the Union itself. Without their votes you cannot build securely for the future. Their ballots will be needed in time to come much more than their muskets were needed in time past. For the sake of the white Unionists, and for their protection, — for the sake of the Republic itself, whose peace is imperilled, I appeal for justice to the colored race. Give the ballot to the colored citizen, and he will be not only assured in his own rights, but the timely defender of yours. By a singular Providence your security is linked inseparably with the recognition of his rights. Deny him, if you will: it is at your peril.

But it is said, Leave this question to the States; and State rights are pleaded against the power of Congress. This has been the cry: at the beginning, to prevent ef-

[1] This was done in part. Mr. Sumner's efforts to make education a condition failed. See, *post*, pp. 304–316, 326–343.

fort against the Rebellion; and now, at the end, to prevent effort against a revival of the Rebellion. Whichsoever way we turn, we encounter the cry. But yielding now, you will commit the very error of President Buchanan, when at the beginning he declared that we could not "coerce" a State. Nobody now doubts that a State in rebellion may be "coerced"; and to my mind it is equally clear that a State just emerging from rebellion may be "coerced" to the condition required by the public peace.

There are powers of Congress, not derived from the Rebellion, which are adequate to this exigency; and now is the time to exercise them, and thus complete the work. It was the Nation that decreed Emancipation, and the Nation must see to it, by every obligation of honor and justice, that Emancipation is secured. It is not enough that Slavery is abolished in name. The Baltimore platform, on which President Johnson was elected, requires the "utter and complete *extirpation* of Slavery from the soil of the Republic"; but this can be accomplished only by the eradication of every inequality and caste, so that all shall be equal before the law.

Be taught by Russia. The Emperor there did not content himself with naked Emancipation. He followed this glorious act with minute provisions for rights of all kinds, — as, to hold property, to sue and testify in court, *to vote*, and *to enjoy the advantages of education*. All this by the same power which decreed Emancipation.

Be taught also by England, speaking by her most illustrious statesmen, who solemnly warn against trusting to any local authorities for justice to the colored race. I begin with Burke, who saw all questions with

the intuitions of the statesman, and expressed himself with the eloquence of the orator. Here are his words, uttered in 1792: —

"I have seen what has been done by the West Indian Assemblies [in reference to the improvement of the condition of the negro]. It is arrant trifling. They have done little; and what they have done is good for nothing, — *for it is totally destitute of an executory principle.*" [1]

Should we leave this question to the States, we, too, should find all they did "arrant trifling," and wanting "an executory principle."

Edmund Burke was followed shortly afterwards by Canning, who, in 1799, exclaimed: —

"There is something in the nature of the relation between the despot and his slave which must vitiate and render nugatory and null whatever laws the former might make for the benefit of the latter, — which, however speciously these laws might be framed, however well adapted they might appear to the evils which they were intended to alleviate, must infallibly be marred and defeated in the execution." [2]

Then again he says: —

"Trust not the masters of slaves in what concerns legislation for slavery. However specious their laws may appear, depend upon it, they must be ineffectual in their application. It is in the nature of things that they should be so. . . . . Their laws can never reach, will never cure the evil. . . . . There is something in the nature of absolute authority, in the relation between master and slave, which makes despotism, in all cases and under all circumstances, an incompetent and

[1] Letter to the Right Hon. Henry Dundas, April 9, 1792: Works (Boston, 1865-67), Vol. VI. p. 261.

[2] Speech in the House of Commons, on the Abolition of the Slave-Trade, March 1, 1799: Speeches (4th edit.), Vol. I. p. 192.

unsure executor even of its own provisions in favor of the objects of its power."[1]

The same testimony was repeated at a later day by Brougham, who, in one of his most remarkable speeches, while protesting against leaving to the colonies legislation for the freedmen, said, —

"I entirely concur in the observations of Mr. Burke, repeated and more happily expressed by Mr. Canning: that the masters of slaves are not to be trusted with making laws upon slavery; that nothing they do is ever found effectual; and that, if, by some miracle, they ever chance to enact a wholesome regulation, it is always found to want what Mr. Burke calls *the executory principle*, — it fails to execute itself."[2]

Such is the concurring authority of three statesmen orators, whose eloquent voices unite to warn against trusting the freedmen to their old masters.

Reason is in harmony with this authoritative testimony. It is not natural to suppose that people who have claimed property in their brethren, God's children, — who have indulged that "wild and guilty fantasy that man can hold property in man," — will become at once the kind and just legislators of freedmen. It is unnatural to expect it. Even if they have made up their minds to Emancipation, they are, from inveterate habit and prejudice, incapable of justice to the colored race. There is the President himself, who once charmed the country and the age by announcing himself the "Moses" of their redemption; and yet he now

[1] Speech in the House of Commons, on the Abolition of the Slave-Trade, March 1, 1799: Speeches (4th edit.), Vol. I. pp. 193, 194.

[2] Speech in the House of Lords, on Negro Apprenticeship, February 20, 1838: Speeches (Edinburgh, 1838), Vol. II. pp. 218, 219.

exerts all his mighty power against the establishment of safeguards without which there can be no true redemption. In present discussion, the old proslavery spirit that was in him, with hostility to principles and to men, comes out anew, — as, on the application of heat, the old tunes frozen up in the bugle of Baron Munchausen were set a-going and broke forth freshly. People do not change suddenly or completely. The old devils are not all cast out at once. Even the best of converts sometimes backslide. From so grave a writer as Southey, in his History of Brazil, we learn that a woman accustomed to consider human flesh an exquisite dainty was converted to Christianity in extreme old age. The faithful missionary strove at once to minister to her wants, and asked if there was any particular food she could take, suggesting various delicacies; to all which the venerable convert replied: "My stomach goes against everything. There is but one thing which I think I could touch. If I had the little hand of a little tender Tapuya boy, I think I could pick the little bones. But, woe is me! there is nobody to go out and shoot one for me!"[1] In similar spirit our Presidential convert now yearns for a taste of those odious pretensions which were a part of Slavery.

Now, when a person thus situated, with great responsibilities to his country and to history, bound by public professions and by political associations, who has declared himself against Slavery, and has every motive for perseverance to the end, — when such a person openly seeks to preserve its odious pretensions, are we not admonished again how unsafe it must be

[1] History of Brazil (London, 1810), Vol. I. p. 223, note.

to trust old masters, under no responsibility and no pledge, with the power of legislating for freedmen? I protest against it.

I claim this power for the Nation. If it be said that the power has never been employed, then I say that the time has come for its employment. I claim it on at least three several grounds.

1. There is the Constitutional Amendment, already adopted by the people, which invests Congress with plenary powers to secure the abolition of Slavery, — ay, its "extirpation," according to the promise of the Baltimore platform, — including the right to sue and testify in court, and the right also to vote. The distinction attempted between what are called *civil* rights and *political* rights is a modern invention. These two words in their origin have the same meaning. One is derived from the Latin, and the other from the Greek. Each signifies what pertains to a *city* or *citizen*. Besides, if the elective franchise seem "appropriate" to assure the "extirpation" of Slavery, Congress has the same power to secure this right that it has to secure the right to sue and testify in courts, which it has already done. Every argument, every reason, every consideration, by which you assert the power for the protection of colored persons in what are called *civil* rights, is equally strong for their protection in what are called *political* rights. In each case you legislate to the same end, — that the freedman may be maintained in the liberty so tardily accorded; and the legislation is just as "appropriate" in one case as in the other.

2. There is also that distinct clause of the Constitution requiring the United States to "guaranty to

every State in this Union *a republican form of government.*" Here is a source of power as yet unused. The time has come for its use. Let it be declared that a State which disfranchises any portion of its citizens by a discrimination in its nature insurmountable, as in the case of color, cannot be considered a republican government. The principle is obvious, and its practical adoption would ennoble the country and give to mankind a new definition of republican government.

3. Another reason with me is peremptory. There is no discrimination of color in the allegiance you require. Colored citizens, like white citizens, owe allegiance to the United States; therefore they may claim protection as an equivalent. In other words, allegiance and protection must be reciprocal. As you claim allegiance of colored citizens, you must accord protection. One is the consideration of the other. And this protection must be in all the rights of citizens, civil and political. Thus again do I bring home to the National Government this solemn duty. If this has not been performed in times past, it was on account of the tyrannical influence of Slavery, which perverted our Government. But, thank God! that influence is overthrown. Vain are the victories of the war, if this influence continues to tyrannize. Formerly the Constitution was interpreted always for Slavery. I insist, that, from this time forward, it shall be interpreted always for Freedom. This is the great victory of the war, — or rather, it is the crowning result of all the victories.

One of the most important battles in the world's history was that of Tours, in France, where the Mahometans, who had come up from Spain, contended

with the Christians under Charles the Hammer. On this historic battle Gibbon remarks, that, had the result been different, "perhaps the interpretation of the Koran would now be taught in the schools of Oxford, and her pulpits might demonstrate to a circumcised people the sanctity and truth of the revelation of Mahomet."[1] Thus was Christianity saved; and thus by our victories has Liberty been saved. Had the Rebels prevailed, Slavery would have had voices everywhere, even in the Constitution itself. But it is Liberty now that must have voices everywhere, and the greatest voice of all in the National Constitution and the laws made in pursuance thereof.

In this cause I cannot be frightened by words. There is a cry against "Centralization," "Consolidation," "Imperialism," — all of which are bad enough, when dedicated to any purpose of tyranny. As the House of Representatives is renewed every two years, it is inconceivable that such a body, fresh from the people and promptly returning to the people, can become a Tyranny, especially when seeking safeguards for Human Rights. A government inspired by Liberty is as wide apart from Tyranny as Heaven from Hell. There can be no danger in Liberty assured by central authority; nor can there be danger in any powers to uphold Liberty. Such a centralization, such a consolidation, — ay, Sir, such an imperialism, — would be to the whole country a well-spring of security, prosperity, and renown. As well find danger in the Declaration of Independence and the Constitution itself, which speak with central power; as well find danger in those central laws

[1] Decline and Fall of the Roman Empire (Boston, 1855), Chap. LII. Vol. VI. p. 387.

which govern the moral and material world, binding men together in society and keeping the planets wheeling in their orbits.

Often during recent trials the cause of our country has assumed three different forms, each essential in itself and yet together constituting a unit, like the shamrock, or white clover, with triple leaf, originally used to illustrate the Trinity. It was Three in One. These three different forms were: first, the national forces; secondly, the national finances; and, thirdly, the ideas entering into the controversy. The national forces and the national finances have prevailed. The ideas are still in question, and even now you debate with regard to the great rights of citizenship. Nobody doubts that the army and navy fall plainly within the jurisdiction of the National Government, and that the finances fall plainly within this jurisdiction; but the rights of citizenship are as thoroughly national as army and navy or finances. You cannot without peril cease to regulate the army and navy, nor without peril cease to regulate the finances; but there is equal peril in abandoning the rights of citizens, who, wherever they may be, in whatever State, are entitled to protection from the Nation. An American citizen in a foreign land enjoys the protecting hand of the National Government. That protecting hand should be his not less at home than abroad.

Fellow-citizens, allow me to gather the whole case into brief compass. The President, wielding the One Man Power, has assumed a prerogative over Congress utterly unjustifiable, while he has dictated a fatal "policy" of Reconstruction, which gives sway to Rebels, puts

off the blessed day of security and reconciliation, and leaves the best interests of the Republic in jeopardy. Treacherous to party, false to the great cause, and unworthy of himself, he has set his individual will against the people of the United States in Congress assembled. Forgetful of truth and decency, he has assailed members as "assassins," and has denounced Congress itself as a revolutionary body, "called or assuming to be the Congress of the United States," and "hanging upon the verge of the Government,"[1] — as if this most enlightened and patriot Congress did not contain the embodied will of the American people. To you, each and all, I appeal to arrest this madness. Your votes will be the first step. The President must be taught that usurpation and apostasy cannot prevail. He who promised to be Moses, and has become Pharaoh, must be overthrown. And may the Egyptians that follow him share the same fate, so that it shall be said now as aforetime, "And the Lord overthrew the Egyptians in the midst of the sea!"

[1] Speeches, February 22 and August 18, 1866: McPherson's History of the United States during Reconstruction, pp. 61, 127.

THE OCEAN TELEGRAPH BETWEEN EUROPE AND AMERICA.

Answer to Invitation to attend a Banquet at New York, in Honor of Cyrus W. Field, November 14, 1866.

On the 15th November, a banquet was given to Cyrus W. Field, at New York, to exchange congratulations on the happy result of his efforts in uniting by telegraph the Old and New World. Many distinguished guests were present. There were also communications from President Johnson, Chief Justice Chase, Secretary Seward, Secretary Welles, General Grant, Admiral Porter, Sir Frederick Bruce, the British Minister, Lord Moncke, Governor-General of Canada, and many others. Mr. Sumner wrote: —

Boston, November 14, 1866.

GENTLEMEN, — I regret much that it is not in my power to unite with you in tribute to Mr. Field, according to the invitation with which you have honored me.

There are events which can never be forgotten in the history of Civilization. Conspicuous among these was the discovery of the New World by Christopher Columbus. And now a kindred event is added to the list: the two worlds are linked together.

In this work Mr. Field has been pioneer and discoverer. As such his name will be remembered with

that gratitude which is bestowed upon the world's benefactors. Already his fame has begun.

Accept my thanks, and believe me, Gentlemen, faithfully yours,

CHARLES SUMNER.

THE COMMITTEE, &c.

ENCOURAGEMENT TO COLORED FELLOW-CITIZENS.

Letter to a Convention of Colored Citizens, December 2, 1866.

December 2, 1866.

DEAR SIR, — I am glad that our colored fellow-citizens are about to assemble in convention to consider how best to promote their welfare, and to secure those equal rights to which they are justly entitled.

You seek nothing less than a revolution. But you will succeed. The revolution must prevail. What are called civil rights have been accorded already; but every argument for these is equally important for political rights, which cannot be denied without the grossest wrong. Let the colored citizens persevere. Let them calmly, but constantly, insist upon those equal rights which are the promise of our institutions. They should appeal to Congress, and they should also appeal to the courts.

I cannot doubt the power and duty of Congress and of the courts to set aside every inequality founded on color. It will be the wonder of posterity that a constitution absolutely free from all discrimination of color was so perverted in its construction as to sanction this discrimination, — as if such a wrong could be derived from a text which contains no single word even to

suggest it. The fountain-head is pure: the waters which flow from it must be equally pure.

Accept my best wishes, and believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

J. M. LANGSTON, ESQ.

THE TRUE PRINCIPLES OF RECONSTRUCTION.

ILLEGALITY OF EXISTING GOVERNMENTS IN THE REBEL STATES.

RESOLUTIONS AND REMARKS IN THE SENATE, DECEMBER 5, 1866.

RESOLUTIONS declaring the true principles of Reconstruction, the jurisdiction of Congress over the whole subject, the illegality of existing governments in the Rebel States, and the exclusion of such States, with such illegal governments, from representation in Congress, and from voting on Constitutional Amendments.

RESOLVED, (1.) That in the work of Reconstruction it is important that no false step should be taken, interposing obstacle or delay, but that, by careful provisions, we should make haste to complete the work, so that the unity of the Republic shall be secured on permanent foundations, and fraternal relations once more established among all the people thereof.

2. That this end can be accomplished only by following the guiding principles of our institutions as declared by our fathers when the Republic was formed, and that neglect or forgetfulness of these guiding principles must postpone the establishment of union, justice, domestic tranquillity, the general welfare, and the blessings of liberty, which, being the declared objects

of the National Constitution, must therefore be the essential aim of Reconstruction itself.

3. That Reconstruction must be conducted by Congress, and under its constant supervision; that under the National Constitution Congress is solemnly bound to assume this responsibility; and that, in the performance of this duty, it must see that everywhere throughout the Rebel communities loyalty is protected and advanced, while the new governments are fashioned according to the requirements of a Christian commonwealth, so that order, tranquillity, education, and human rights shall prevail within their borders.

4. That, in determining what is a republican form of government, Congress must follow implicitly the definition supplied by the Declaration of Independence; and, in the practical application of this definition, it must, after excluding all disloyal persons, take care that new governments are founded on the two fundamental truths therein contained: first, that all men are equal in rights; and, secondly, that all just government stands only on the consent of the governed.

5. That all proceedings with a view to Reconstruction originating in Executive power are in the nature of usurpation; that this usurpation becomes especially offensive, when it sets aside the fundamental truths of our institutions; that it is shocking to common sense, when it undertakes to derive new governments from a hostile population just engaged in armed rebellion; and that all governments having such origin are necessarily illegal and void.

6. That it is the duty of Congress to proceed with Reconstruction; and to this end it must assume jurisdiction of the States lately in rebellion, except so far

as that jurisdiction has been already renounced, and it must recognize only the Loyal States, or States having legal and valid legislatures, as entitled to representation in Congress, or to a voice in the adoption of Constitutional Amendments.

These resolutions were read and ordered to be printed. Mr. Sumner, after remarking that he saw "no chance for peace in the Rebel States until Congress does its duty by assuming jurisdiction over that whole region," proposed to read a letter he had just received from Texas.

MR. MCDOUGALL [of California]. Allow me to ask the Senator to read the signature. Let the name of the writer be given.

MR. SUMNER. I shall not read the signature ——

MR. MCDOUGALL. Ah ! ha !

MR. SUMNER. And for a very good reason, — that I could not read the signature without exposing the writer to violence, if not to death.

MR. DAVIS [of Kentucky]. Mr. President, I rise to a question of order. I ask if the reading of the letter by the Senator from Massachusetts is in order.

THE PRESIDENT *pro tempore*. In the opinion of the Chair, a Senator, in making a speech to the Senate, has a right to read from a letter in his possession, if he deems proper.

MR. DAVIS. I ask whether it is in order for the Senator from Massachusetts to make a speech at this time.

THE PRESIDENT *pro tempore*. The Chair sees nothing disorderly in it.

Mr. Sumner then read the letter, and remarked: —

I should not read this letter, if I were not entirely satisfied of the character and intelligence of the writer. It is in the nature of testimony which the Senate cannot disregard. It points the way to duty. We must, Sir, follow the suggestions of this patriot Unionist, and erase the governments under which these outrages are perpetrated. The writer calls them "sham governments." They are governments having no element of vitality. They are disloyal in origin, and they share the character of the Rebellion itself. We must go forth

to meet them, and the spirit in which they have been organized, precisely as in years past we went forth to meet the Rebellion. The Rebellion, Sir, has assumed another form. Our conflict is no longer on the field of battle, but here in this Chamber, and in the Chamber at the other end of the Capitol. Our strife is civic, but it should be none the less strenuous.

FEMALE SUFFRAGE, AND AN EDUCATIONAL TEST OF MALE SUFFRAGE.

Speech in the Senate, on Amendments to the Bill conferring Suffrage without Distinction of Color in the District of Columbia, December 13, 1866.

December 10th, the Suffrage Bill for the District of Columbia, considered in the former session of Congress,[1] was again taken up for consideration, when Mr. Cowan, of Pennsylvania, moved to amend it by striking out the word "male," so that there should be no limitation of sex. December 12th, after debate, this motion was rejected, — Yeas 9, Nays 37. The Senators voting in the affirmative were Mr. Anthony, of Rhode Island, Mr. Gratz Brown, of Missouri, Mr. Buckalew, of Pennsylvania, Mr. Cowan, of Pennsylvania, Mr. Foster, of Connecticut, Mr. Nesmith, of Oregon, Mr. Patterson, of Tennessee, Mr. Riddle, of Delaware, and Mr. Wade, of Ohio.

The following amendment was then moved by Mr. Dixon, of Connecticut : —

"*Provided*, That no person who has not heretofore voted in this District shall be permitted to vote, unless he shall be able, at the time of offering to vote, to read, and also to write his own name."

December 13th, at this stage of the debate, Mr. Sumner said : —

MR. PRESIDENT, — I have already voted against the motion to strike out the word "male," and I shall vote against the pending proposition to fix an educational test. In each case I am governed by the same consideration.

[1] *Ante*, Vol. XIII. pp. 5–7.

In voting against striking out the word "male," I did not intend to express any opinion on the question, which has at last found its way into the Senate Chamber, whether women shall be invested with the elective franchise. That question I leave untouched, contenting myself with the remark, that it is obviously the great question of the future, — at least one of the great questions, — which will be easily settled, whenever the women in any considerable proportion insist that it shall be settled. And so, in voting against an educational test, I do not mean to say that under other circumstances such test may not be proper. But I am against it now.

The present bill is for the benefit of the colored race in the District of Columbia. It completes Emancipation by Enfranchisement. It entitles all to vote without distinction of color. The courts and the rail-cars of the District, even the galleries of Congress, have been opened. The ballot-box must be opened also. Such is my sense not only of the importance, but of the necessity of this measure, so essential does it appear to me for the establishment of peace, security, and reconciliation, which I so earnestly covet, that I am unwilling to see it clogged, burdened, or embarrassed by anything else. I wish to vote on it alone. Therefore, whatever the merits of other questions, I have no difficulty in putting them aside until this is settled.

The bill for Impartial Suffrage in the District of Columbia concerns directly some twenty thousand colored persons, whom it will lift to the adamantine platform of Equal Rights. If regarded simply in its influence on the District, it would be difficult to exaggerate its value; but when regarded as an example to the whole

country, under the sanction of Congress, its value is infinite. In the latter character it becomes a pillar of fire to illumine the footsteps of millions. What we do here will be done in the disorganized States. Therefore we must be careful that what we do here is best for the disorganized States.

If the bill could be confined in influence to the District, I should have little objection to an educational test as an experiment. But it cannot be limited to any narrow sphere. Practically, it takes the whole country into its horizon. We must, therefore, act for the whole country. This is the exigency of the present moment.

Now to my mind nothing is clearer than the present necessity of suffrage for all colored persons in the disorganized States. It will not be enough, if you give it to those who read and write; you will not in this way acquire the voting force needed there for the protection of Unionists, whether white or black. You will not secure the new allies essential to the national cause. As you once needed the muskets of blacks, so now you need their votes, — and to such extent that you can act with little reference to theory. You are bound by the necessity of the case. Therefore, when asked to open suffrage to women, or when asked to establish an educational standard for our colored fellow-citizens, I cannot, on the present bill, simply because the controlling necessity under which we act will not allow it. By a singular Providence, we are constrained to this measure of Enfranchisement for the sake of peace, security, and reconciliation, so that loyal persons, white or black, may be protected, and that the Republic may live. Here, in the national capital, we begin the real work of Recon-

struction, by which the Union will be consolidated forever.

The amendment of Mr. Dixon was rejected, — Yeas 11, Nays 34. The Senators voting in the affirmative were Mr. Anthony, Mr. Buckalew, Mr. Dixon, Mr. Doolittle, Mr. Fogg, Mr. Foster, Mr. Hendricks, Mr. Nesmith, Mr. Patterson, Mr. Riddle, and Mr. Willey.

The bill then passed the Senate, — Yeas 32, Nays 13. On the next day it passed the other House, and, being vetoed by President Johnson, it passed both Houses by a two-thirds vote, so that it became a law.[1]

[1] Statutes at Large, Vol. XIV. p. 375.

PROHIBITION OF PEONAGE.

Resolution and Remarks in the Senate, January 3, 1867.

January 3d, in the Senate, Mr. Sumner introduced the following resolution: —

"*Resolved*, That the Committee on the Judiciary be directed to consider if any further legislation is needed to prevent the enslavement of Indians in New Mexico or any system of peonage there, and especially to prohibit the employment of the army of the United States in the surrender of persons claimed as peons."

Mr. Sumner then called attention to facts showing the necessity of action. He said: —

I THINK you will be astonished, when you learn that the evidence is complete, showing in a Territory of the United States the existence of slavery which a proclamation of the President has down to this day been powerless to root out. During the life of President Lincoln, I more than once appealed to him, as head of the Executive, to expel this evil from New Mexico. The result was a proclamation, and also definite orders from the War Department; but, in the face of proclamation and definite orders, the abuse has continued, and, according to official evidence, it seems to have increased.

Mr. Sumner here read from the Report of the Commissioner on Indian Affairs, also from the Report of a Special Agent, containing the correspondence of army officers, including an order from the As-

sistant Inspector General in New Mexico to aid in the rendition of fugitive peons to their masters, and then remarked: —

The special Indian agent who reports this correspondence very aptly adds: —

"The aid of Congress is invoked to stop the practice."

I hope the Department of War will communicate directly with General Carleton, under whose sanction this order has been made, and I hope that our Committee on the Judiciary will consider carefully if further legislation is not needed to meet this case. A Presidential proclamation has failed; orders of the War Department have failed; the abuse continues, and we have a very learned officer in the army of the United States undertaking to vindicate it.

The reference was changed to the Committee on Military Affairs, and the resolution was adopted. Subsequently, Mr. Wilson, of Massachusetts, Chairman of the Committee on Military Affairs, reported a bill to abolish and forever prohibit the system of peonage in the Territory of New Mexico and other parts of the United States, which became a law.[1]

[1] Statutes at Large, Vol. XIV. p. 546.

PRECAUTION AGAINST THE REVIVAL OF SLAVERY.

Remarks in the Senate, on a Resolution and the Report of the Judiciary Committee, January 3 and February 20, 1867.

January 3, 1867, in the Senate, Mr. Sumner introduced the following resolution: —

"*Resolved*, That the Committee on the Judiciary be directed to consider if any action of Congress be needed, either in the way of legislation or of a supplementary Amendment to the Constitution, to prevent the sale of persons into slavery for a specified term by virtue of a decree of court."

In its consideration, he called attention to cases like the following: —

"Public Sale. The undersigned will sell at the court-house door, in the city of Annapolis, at twelve o'clock, M., on Saturday, 8th December, 1866, a negro man named Richard Harris, for six months, convicted at the October term, 1866, of the Anne Arundel County Circuit Court, for larceny, and sentenced by the Court to be sold as a slave.

"Terms of sale, cash. "Wm. Bryan,

"*Sheriff Anne Arundel County.*

"December 3, 1866."

He then remarked: —

IT seems to me, Sir, that these cases throw upon Congress the duty at least of inquiry; and I wish the Committee on the Judiciary, from which proceeded the Constitutional Amendment abolishing Slavery, would enlighten us on the validity of these proceedings, and the necessity or expediency of further action to prevent

their repetition. I do not know that the Civil Rights Bill, which was afterward passed, may not be adequate to meet these cases; but I am not clear on that point.

When the Constitutional Amendment was under consideration, I objected positively to the phraseology. I thought it an unhappy deference to an original legislative precedent at an earlier period of our history. I regretted infinitely that Congress was willing, even indirectly, to sanction any form of slavery. But the Senate supposed that the phrase "involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted," was simply applicable to ordinary imprisonment. At the time I feared that it might be extended so as to cover some form of slavery. It seems now that it is so extended, and I wish the Committee to consider whether the remedy can be applied by Act of Congress, or whether we must not go further and expurgate that phraseology from the text of the Constitution itself.

After remarks by Mr. Reverdy Johnson and Mr. Creswell, of Maryland, Mr. Sumner said: —

The remarks of the Senator from Maryland [Mr. JOHNSON] seem to justify entirely the resolution I have brought forward. I have simply called attention to what was already notorious, but with a view to action. I am not sure, that, under the Constitutional Amendment, this abuse may not be justified, and I desire to have the opinion of the Committee after ample consideration.

This, Sir, is not the first time in which incidents like this have occurred. I remember, that, many years ago, when I first came into this Chamber, the good

people whom I represent were shocked at reading that four colored sailors of Massachusetts had been sold into slavery in the State of Texas. I did what I could to obtain their liberation, but without success. I applied directly to the Senator from Texas at that time, who will be remembered by many as the able General Rusk, beside whom I sat on the other side of the Chamber. He openly vindicated the power of the court to make such a sale, and I have never heard anything of those poor victims from that time to this. Under the operation of the Constitutional Amendment I trust they are now emancipated; but I am not sure of that, since they are in Texas.

The resolution was adopted. Subsequently Mr. Creswell moved the printing of a bill, introduced by him at the preceding session, to protect children of African descent from being enslaved in violation of the Constitution of the United States.

February 20th, Mr. Poland, from the Committee on the Judiciary, to whom this bill had been referred, reported that its object was accomplished by the Civil Rights and the Habeas Corpus Acts, and that no further legislation was needed. In a conversation that ensued, Mr. Sumner said: —

It strikes me the practical question is, whether recent incidents have not admonished us that there is a disposition to evade the statute, and under the protection of State laws ——

Mr. Trumbull [of Illinois]. That is the very thing the statute guards against.

Mr. Sumner. But the statute was not effective to prevent those incidents.

Mr. Trumbull. Will any statute, if it is not executed?

Mr. Sumner. But when apprised of an evasion, I ask whether it is not expedient to counteract that eva-

sion specifically and precisely, so that there shall be no possible excuse? Liberty is won by these anxious trials. Those who represent her are accustomed to take case by case and difficulty by difficulty, — overcoming them, if they can. Secure first the general principle, as in the Constitutional Amendment, — then legislation as extensive or minute as the occasion requires. Let it be "precept upon precept, line upon line," so long as any such outrage can be shown.

I would not seem pertinacious, though I do not know that I can err by any pertinacity on a question of Human Liberty. I feel that we are painfully admonished, by incidents occurring under our very eyes, that we ought to do something to tighten that great Constitutional Amendment. It contains in its text words which I regret. I regretted them at the time; I proposed to strike them out; and now they return to plague the inventor. There should have been no recognition in the Constitutional Amendment of any possibility of Slavery. The reply is, that the Amendment, if properly interpreted, does not recognize the possibility of Slavery being legal in any just sense. But it is misinterpreted, — has been so in an adjoining State; and who can tell that it will not be so now in every one of the Southern States? I am sorry that the Committee has not reported the bill.

The Senate last night passed a bill, on the report of my colleague, to prohibit slavery and peonage in New Mexico. Under the Constitutional Amendment, I take it, that bill was unnecessary, it was superfluous. But we have found a difficulty in that Territory. There has been outrage; slavery in some form exists there; and consequently my colleague was right, when he

brought his Committee to the conclusion that they must meet it by specific enactment. Where the abuse appears, we must root it out. That is Radicalism. So long as a human being is held as a slave anywhere under this flag, from the Atlantic to the Pacific coast, there is occasion for your powerful intervention; and if there is ambiguity or failure in existing statutes, then you must supply another statute.

PROTECTION AGAINST THE PRESIDENT.

SPEECHES IN THE SENATE, ON AN AMENDMENT TO THE TENURE OF OFFICE BILL, JANUARY 15, 17, AND 18, 1867.

THIS session of Congress was occupied by efforts to restrain and limit the appointing power of the President. The differences between the President and Congress increased daily. Among measures considered by Congress was a bill to regulate the tenure of offices, known as the Tenure of Office Bill.

January 15th, Mr. Sumner moved to amend this bill by adding a new section: —

"*And be it further enacted*, That all officers or agents, except clerks of Departments, now appointed by the President or by the head of any Department, whose salary or compensation, derived from fees or otherwise, exceeds one thousand dollars annually, shall be nominated by the President and appointed by and with the advice and consent of the Senate; and the term of all such officers or agents who have been appointed since the first day of July, 1866, either by the President or by the head of a Department, without the advice and consent of the Senate, shall expire on the last day of February, 1867."

Mr. Edmunds, of Vermont, who reported the pending bill, opposed the amendment. Mr. Sumner followed.

MR. PRESIDENT, — The proposition I offer now I moved last week on another bill, in a slightly different form, but it was substantially the same. I did not then understand that there was objection to it in principle. It was opposed as not germane to the bill in hand; or, if germane, its adoption on that bill was

supposed in some way to embarrass its passage. On that ground, as I understand, it was opposed, — not on its merits. Senators who spoke against it avowed their partiality for it, if I understood them aright, — declared, that, if they had an opportunity on any proper bill, they would vote for it.

Well, Sir, I move it on another bill, to which I believe all will admit it is entirely germane. There is no suggestion that it is not germane. It is completely in order. But the objection of the Senator from Vermont, if I understand, is, that it may interfere with the symmetry of his bill, and introduce an element which he, who has that bill in charge and now conducts it so ably, had not intended to introduce. Very well, Sir; that may be said; but I do not think it a very strong objection.

The Senator is mistaken, if he supposes that the amendment would endanger the bill. Just the contrary. It would give the bill strength.

Mr. Howe. Merit.

Mr. Sumner. It would give it both strength and merit, — because it is a measure which grows out of the exigency of the hour. His bill on a larger scale is just such a measure. It grows out of the present exigency, and this is its strength and its merit. We shall pass that, if we do pass it, — and I hope we shall, — to meet a crisis. We all feel its necessity. But the measure which I now move grows equally out of the present exigency. If ingrafted on the bill, it will be, like the original measure, to meet the demands of the moment. It will be because without it we shall leave something undone which we ought to do.

Now, I ask Senators, is there any one who doubts that under the circumstances such a provision ought to pass? Is there any one who doubts, after what we have seen on a large scale, that the President, for the time being at least, ought to be deprived of the extraordinary function he has exercised? He has announced in public speech that he meant to "kick out of office" present incumbents; and it was in this proceeding, that, on his return to Washington, he undertook to remove incumbents wherever he could. It cannot be doubted, Sir, that we owe protection to these incumbents, so far as possible. This is an urgent duty. If the Senator from Vermont will tell me any other way in which this can be promoted successfully, I shall gladly follow him; but until then I must insist that it shall share the fortunes of the bill, "pursue the triumph and partake the gale." If the bill succeeds, then let this measure, which is as good as the bill.

But the suggestion is made, that the amendment should be matured in a committee. Why, Sir, it is very simple. Any one can mature it who applies his mind to it for a few moments. It has already been before the Senate for several days, discussed once, twice, three times, I think, not elaborately, but still discussed, so that its merits have become known; and beside its discussion in open Senate, I am a witness that it has been canvassed in conversation much. Many Senators have applied their minds to it, and I may say that in offering it now I speak not merely for myself, but for others, and the proposition, in the form in which I present it, is not merely my own, but it is that of many others, to whose careful supervision it has been submitted. Therefore I say that it is matured, so far

as necessary, and there is no reason why the Senate should not act upon it. Why postpone what is in itself so essentially good? Why put off to some unknown future the chance of applying the remedy to an admitted abuse? Is there any one here who says that this is not an abuse, that here is not a tyrannical exercise of power? No one. Then, Sir, let us apply the remedy. This is the first chance we can get. Take it.

Mr. Fessenden was "not disposed to overturn a system which has recommended itself to the experience of the Government, recommended itself to the most approved mode of doing the business of the country for years, with which no fault whatever has been found in its practical operation, simply because at this time we are in this 'muss' with regard to appointments." He was "opposed utterly to the amendment." Mr. Sumner replied: —

It is very easy to answer an argument, when you begin by exaggerating consequences. Now, Sir, the Senator warns us against my proposition, because it would impose so much business upon the Senate. Is that true? He reminds us of the number of appointments we should be obliged to act upon in the Internal Revenue Department. How many? The assistant assessors. What others? Those can be counted.

Mr. Cragin. Inspectors under the internal revenue laws.

Mr. Sumner. Inspectors also: those can all be counted. He then reminds us of the officers in the custom-houses. They can all be counted. It would not act on clerks in the custom-houses; it acts only, if at all, on officers of the custom-houses, in a certain sense superior, some with considerable responsibility. They can all be counted. It is easy to say that

we shall be obliged to deal with many thousands; but I say, nevertheless, they can all be counted.

But are we not obliged to deal with many thousand postmasters, and also with many thousand officers in the army? How have we carried this great war along? The Senate has acted always upon all the nominations of the Executive for the national army, beginning with the general and ending with a second lieutenant. Every one comes before the Senate; and what is the consequence? The Executive has a direct responsibility to the Senate with regard to every army appointment. But you are not disposed to renounce that responsibility because it brings into this Chamber many thousand nominations. Of the officers that I would bring into the Chamber, some you may consider as second lieutenants in the civil service, others as first lieutenants, others as captains. And why should we not act upon them?

The Senator says we had better follow the received system. One of the finest sentiments that have fallen from one of the most gifted of our fellow-countrymen is that verse in which he says, —

"New occasions teach new duties."

We have a new occasion, teaching a new duty. That new occasion is the misconduct of the Executive of the United States; and the new duty is, that Congress should exercise all its powers in throwing a shield over fellow-citizens. The Executive is determined to continue this warfare upon the incumbents of office; shall we not, if possible, protect them? That is our duty growing out of this hour. It may not be our duty next year, or four years from now, as it was not our duty last year, or four years back. But because it may not

be our duty next year, and was not our duty last year, it does not follow that it is not our duty now. I would act in the present according to the exigency; and if there is an abuse, as no one will hesitate, I think, to admit, I would meet it carefully, considerately, and bravely.

. . . . .

When to-morrow comes, if happily we see a clearer sky, I shall then hearken gladly to the Senator from Maine, and follow him in sustaining the old system; but meanwhile the old system has ceased to be applicable. It does not meet the case. It was good enough when we had a President in harmony with the Senate; but it is not good enough now. We owe it, therefore, to ourselves, and to those looking here for protection, to apply the remedy.

January 17th, after an earnest debate, Mr. Sumner spoke again.

Mr. President, — As the proposition on which the Senate is about to vote was brought forward by me, I hope that I may have the indulgence of the Senate for a few minutes. Had I succeeded in catching the eye of the Chair at the proper time, I should, perhaps, have said something in reply to the Senator from Indiana [Mr. Hendricks]; but he has already been answered by the Senator from California [Mr. Conness]. Besides, the topics which he introduced were political. He did not address himself directly to the proposition itself. I do not say that his remarks were irrelevant, but obviously he seized the occasion to make a political speech. The Senator is an excellent debater; he always speaks to the point as he understands it; and yet his point is apt to be political. Of course he

speaks as one having authority with his party, in which he is an acknowledged leader. And now, Sir, you will please to remark, he comes forward as leader for the President of the United States. The Senator from Indiana, an old-school Democrat, — he will not deny the appellation, — presents himself as defender of the President. I congratulate the President upon so able a defender. Before this great controversy is closed, the President will need all the ability, all the experience, all the admirable powers of debate which belong to the distinguished Senator.

As I shall recall the Senate precisely to the question, I begin by asking the Secretary to read the amendment.

The Secretary read the amendment, when Mr. Sumner continued.

Now, Mr. President, I am unwilling to be diverted from that plain proposition into any general discussion of a merely political character. I ask your attention to the simple question on which you are to vote.

Here I meet objections brought against the amendment, so far as I have been able to comprehend them. They have chiefly found voice, unless I am much mistaken, in the Senator from Maine [Mr. FESSENDEN], who is as earnest as he is unquestionably able. The Senator began with a warning, and his beginning gave tone to all he said. He warned us not to forget the lessons of the past; and he warned us also not to fall under the influence of any animosity. When he warned us not to forget the lessons of the past, such was his earnestness that he seemed to me fresh from the study of Confucius. No learned Chinese, anxious that there should be no departure from the ancient ways, and filled

with devotion for distant progenitors, could have enjoined that duty more reverently. We were to follow what had been done in the past. Now, Sir, I have a proper deference for the past; I recognize its lessons, and seek to comprehend them; but I am not a Chinese, to be swathed by traditions. I break all bands and wrappers, when the occasion requires. I trust that the Senator will do so likewise. The present occasion is of such a character that his lesson is entirely inapplicable. It is well to regard the past, and study its teachings. It is well also to regard the future, and seek to provide for its necessities. This is plain enough.

Then, Sir, we are not to act under the influence of animosity. Excellent counsel. But, pray, what Senator, on an occasion like this, when we strive to place in the statutes of the country an important landmark, can allow himself to act under such influence? Is the Senator from Maine the only one who can claim this immunity? I am sure he will not make exclusive claim. As he is conscious that he is free from such disturbing influence, so also am I. He is not more free from it than I am. Most sincerely from my heart do I disclaim all animosity. I have nothing of the kind. I see nothing but my duty.

And when I speak of duty, I speak of what I would emphatically call the duty of the hour. I tried the other day, in what passed between myself and the Senator from Maine, briefly to illustrate this idea. I said that we are not to act absolutely with reference to the past, nor absolutely with reference to the future, but we are to act in the present. Each hour has its duties, and this hour has duties such as few other hours

in our history have ever presented. Is there any one who can question it? Are we not in the midst of a crisis? Sometimes it is said that we are in the midst of a revolution. Call it, if you will, simply a crisis. It is a critical hour, having its own peculiar responsibilities. Now, if you ask me in what this present duty specially centres, on what it specially pivots, I have an easy reply: it is in protection to the loyal and patriotic citizen, wherever he may be. I repeat it, protection to the loyal and patriotic citizen is the imminent duty of the hour. This duty is so commanding, so engrossing, so absorbing, so peculiar, — let me say, in one word, so sacred, — that to neglect it is like the neglect of everything. It is nothing less than a general abdication.

Such, I say emphatically, is the duty of the hour, in presence of which it is vain for the Senator to cite the experience of other times, when no such duty was urgent. He does not meet the case. What he says is irrelevant. All that was done in the past may have been well done; for it I have no criticism; but at this time it is absolutely inapplicable.

I return, then, to my proposition, that the duty of the hour is protection to the loyal and patriotic citizen. But when I have said this, I have not completed the proposition. You may ask, Protection against whom? I answer plainly, Against the President of the United States. There, Sir, is the duty of the hour. Ponder it well, and do not forget it. There was no such duty on our fathers, there was no such duty on recent predecessors in this Chamber, because there was no President of the United States who had become the enemy of his country.

Here Mr. Sumner was called to order by Mr. McDougall, a Democratic Senator from California, who insisted that no Senator had a right to make use of such words in speaking of the President. Confusion ensued, with various calls to order. There was question as to what Mr. Sumner really said. The presiding officer [Mr. ANTHONY, of Rhode Island] decided that Mr. Sumner was in order, from which decision Mr. McDougall appealed, but finally withdrew his appeal, when Mr. Sumner continued.

When interrupted in the extraordinary manner witnessed by the Senate, I was presenting reasons in favor of the measure on which we are to vote, and I insisted as strongly as I could that the special duty of the hour was protection to loyal and patriotic citizens against the President; I was replying to what fell from the Senator from Maine, who seems, if I may judge from his argument, to feel that there is no occasion for special safeguard, and that the system left by our fathers is enough. In this reply I used language which, according to the short-hand reporter, was as follows: I read from his notes: —

"There, Sir, is the duty of the hour. There was no such duty on our fathers, there was no such duty on our recent predecessors, because there was no President of the United States who had become the enemy of his country."

These were my words when suddenly interrupted. By those words, Sir, I stand.

MR. DOOLITTLE [of Wisconsin]. I raise a question of order, whether these words are in order, as stated by the Senator.

THE PRESIDING OFFICER. The Chair has already decided a similar point of order. The Chair will submit this question to the Senate.

The Presiding Officer decided that Mr. Sumner was in order. Mr. Doolittle appealed from this decision. Debate ensued on the appeal,

when Mr. Lane, of Indiana, moved to lay the appeal upon the table. Amid much confusion, other motions were interposed. At last a vote was reached on the motion of Mr. Lane. The yeas and nays were ordered, and, being taken, resulted, — Yeas 29, Nays 10. So the appeal was laid upon the table. Mr. Sumner, who was in his seat, refrained from voting. The Senate then adjourned.

January 18th, Mr. Sumner, having the floor, continued.

It is only little more than a year ago that I felt it my duty to characterize a message of the President as "whitewashing."[1] The message represented the condition of things in the Rebel States as fair and promising, when the prevailing evidence was directly the other way. Of course the message was "whitewashing," and this was a mild term for such a document. But you do not forget how certain Senators, horror-struck at this plainness, leaped forward to vindicate the President. Yesterday some of these same Senators, horror-struck again, leaped forward again in the same task. Time has shown that I was right on the former occasion. If anybody doubts that I was right yesterday, I commend him to time. He will not be obliged to wait long. Meanwhile I shall insist always upon complete freedom of debate, and I shall exercise it. John Milton, in his glorious aspirations, said, "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."[2] Thank God, now that slave-masters are driven from this Chamber, such is the liberty of an American Senator. Of course there can be no citizen of a republic too high for exposure, as there can be none too low for protection. Exposure of the powerful, and protection of the

[1] *Ante*, Vol. XIII. pp. 47, seqq.

[2] Areopagitica; A Speech for the Liberty of Unlicensed Printing: Works (London, 1851), Vol. IV. p. 442.

weak, — these are not only invaluable liberties, but commanding duties.

At last the country is opening its eyes to the actual condition of things. Already it sees that Andrew Johnson, who came to supreme power by a bloody incident, has become the successor of Jefferson Davis in the spirit by which he is ruled and in the mischief he inflicts on his country. It sees the President of the Rebellion revived in the President of the United States. It sees that the violence which took the life of his illustrious predecessor is now by his perverse complicity extending throughout the Rebel States, making all who love the Union its victims, and filling the land with tragedy. It sees that the war upon faithful Unionists is still continued under his powerful auspices, without distinction of color, so that all, both white and black, are sacrificed. It sees that he is the minister of discord, and not the minister of peace. It sees, that, so long as his influence prevails, there is small chance of tranquillity, security, or reconciliation, — that the restoration of prosperity in the Rebel States, so much longed for, must be arrested, — that the business of the whole country must be embarrassed, — and that the conditions so essential to a sound currency must be postponed. All these things the country observes. But indignation assumes the form of judgment, when it is seen also that this incredible, unparalleled, and far-reaching mischief, second only to the Rebellion itself, of which it is a continuation, is created, invigorated, and extended through plain usurpation.

I know that the President sometimes quotes the Constitution, and professes to carry out its behests. But this pretension is of little value. A French historian,

whose fame as writer is eclipsed by his greater fame as orator, who has held important posts, and now in advancing years is still eminent in public life, has used words which aptly characterize an attempt like that of the President. I quote from the History of M. Thiers, while describing what is known as the Revolution of the 18th Brumaire.

"When any one wishes to make a revolution, it is always necessary to disguise the illegal as much as possible, — to use the terms of a Constitution in order to destroy it, and the members of a Government in order to overturn it."[1]

In this spirit the President has acted. He has bent Constitution, laws, and men to his arbitrary will, and has even invoked the Declaration of Independence for the overthrow of those Equal Rights it so grandly proclaims.

In holding up Andrew Johnson to judgment, I do not dwell on his open exposure of himself in a condition of intoxication, while taking the oath of office, — nor do I dwell on the maudlin speeches by which he has degraded the country as it was never degraded before, — nor do I hearken to any reports of pardons sold, or of personal corruption. This is not the case against him, as I deem it my duty to present it. These things are bad, very bad; but they might not, in the opinion of some Senators, justify us on the present occasion. In other words, they might not be a sufficient reason for the amendment which I have moved.

But there is a reason which is ample. The President has usurped the powers of Congress on a colossal scale,

[1] Histoire de la Révolution Française (13me édit.), Tom. X. p. 357.

and has employed these usurped powers in fomenting the Rebel spirit and kindling anew the dying fires of the Rebellion. Though the head of the Executive, he has rapaciously seized the powers of the Legislative, and made himself a whole Congress, in defiance of a cardinal principle of republican government, that each branch must act for itself, without assuming the powers of the other; and, in the exercise of these illegitimate powers, he has become a terror to the good and a support to the wicked. This is his great and unpardonable offence, for which history must condemn him, if you do not. He is a usurper, through whom infinite wrong is done to his country. He is a usurper, who, promising to be a Moses, has become a Pharaoh. Do you ask for evidence? No witnesses are needed to prove this guilt. It is found in public acts which are beyond question. It is already written in the history of our country. Absorbing to himself all the powers of the National Government, and exclaiming, with the French monarch, that *he alone* is "the Nation," he assumes, without color of law, to set up new governments in the Rebel States, and, in the prosecution of this palpable usurpation, places these governments of his own creation in the hands of traitors, to the exclusion of patriot citizens, white and black, who, through his agency, are trampled again under the heel of the Rebellion. Thus a power plainly illegitimate is wielded to establish governments plainly illegitimate, which are nothing but engines of an intolerable oppression, under which peace and union are impossible; and this monstrous usurpation is continued in constant efforts by every means to enforce the recognition of these illegitimate governments, so tyrannical in origin

and so baneful in the influence they are permitted to exert. And now, in the maintenance of this usurpation, the President employs the power of removal from office. Some, who would not become the partisans of his tyranny, he has, according to his own language, "kicked out." Others are spared, but silenced by this menace and the fate of their associates. Wherever any vacancy occurs, whether in the Loyal or the Rebel States, it is filled by the partisans of his usurpation. Other vacancies are created to provide for these partisans. I need not add, that, just in proportion as we sanction such nominations or fail to arrest them, according to the measure of our power, we become parties to his usurpation.

Here I am brought directly to the practical application of this simple statement. I have already said that the duty of the hour is in protection to the loyal and patriotic citizen against the President. This cannot be doubted. The first duty of a Government is protection. The crowning glory of a Republic is, that it leaves no human being, however humble, without protection. Show me a man exposed to wrong, and I show you an occasion for the exercise of all the power that God and the Constitution have given you. It will not do to say that the cases are too numerous, or that the remedy cannot be applied without interfering with a system handed down from our fathers, or, worse still, that you have little sympathy with this suffering. This will not do. You must apply the remedy, or fail in duty. Especially must you apply it, when, as now, this wrong is part of a huge usurpation in the interest of recent Rebellion.

The question, then, recurs, Are you ready to apply

the remedy, according to your powers? The necessity for this remedy may be seen in the Rebel States, and also in the Loyal States, for the usurpation is felt in both.

If you look at the Rebel States, you will see everywhere the triumph of Presidential tyranny. There is not a mail which does not bring letters without number supplicating the exercise of all the powers of Congress against the President. There is not a newspaper which does not exhibit evidence that you are already tardy in this work of necessity. There is not a wind from that suffering region which is not freighted with voices of distress. And yet you hesitate.

I shall not be led aside to consider the full remedy, for it is not my habit to travel out of the strict line of debate. Therefore I confine myself to the bill before us, which is applicable alike to Loyal and Rebel States.

This bill has its origin in what I have already called the special duty of the hour, which is protection of loyal and patriotic citizens against the President. I have shown the necessity of this protection. But the brutal language the President employs shows the spirit in which he acts. The Senator from Indiana [Mr. HENDRICKS], whose judgment could not approve this brutality, doubted if the President had used it. Let me settle this question. Here is the "National Intelligencer," always indulgent to the President. In its number for the 13th of September last it thus reports what the Chief Magistrate said at St. Louis: —

"I believe that one set of men have enjoyed the emoluments of office long enough, and they should let another portion of the people have a chance. [*Cheers.*] How are

these men to be got out [*A voice, 'Kick 'em out!' — cheers and laughter*], unless your Executive can put them out, — unless you can reach them through the President? Congress says he shall not turn them out, and they are trying to pass laws to prevent it being done. Well, let me say to you, if you will stand by me in this action [*cheers*], — if you will stand by me in trying to give the people a fair chance, — to have soldiers and citizens to participate in these offices, — God being willing, I will kick them out, — I will kick them out just as fast as I can. [*Great cheering.*]"

Such diction as this is without example. Proceeding from the President, it is a declaration of "policy" which you must counteract; and in this duty make a precedent, if need be.

The bill before the Senate, which the Senator from Vermont [Mr. EDMUNDS] has shaped with so much care and now presses so earnestly, arises from this necessity. Had Abraham Lincoln been spared to us, there would have been no occasion for any such measure. It is a bill arising from the exigency of the hour. As such it is to be judged. But it does not meet the whole case. Undertaking to give protection, it gives it to a few only, instead of the many. It provides against the removal of persons whose offices, according to existing law and Constitution, are held by and with the advice and consent of the Senate. Its special object is to vindicate the power of the Senate over the offices committed to it according to existing law and Constitution. Thus vindicating the power of the Senate, it does something indirectly to protect the citizen. In this respect it is beneficent, and I shall be glad to vote for it.

The amendment goes further in the same direction.

It provides that all agents and officers appointed by the President or by the head of a Department, with salaries exceeding $1,000, shall be appointed only by and with the advice and consent of the Senate; and it further proceeds to vacate all such appointments made since 1st July last past, so as to arrest the recent process of "kicking out." The proposition is simple; and I insist that it is necessary, unless you are willing to leave fellow-citizens without protection against tyranny. Really the case is so plain that I do not like to argue it, and yet you will pardon me, if I advert to certain objections which have been made.

We have been told that the number of persons it would bring before the Senate is such that it would clog and embarrass the public business, — in other words, that we have not time to deal with so many cases. This is a strange argument. Because the victims are numerous, therefore we are to fold our hands and let the sacrifice proceed. But I insist that just in proportion to the number is the urgency of your duty. Every victim has a voice; and when these voices count by thousands, you have no right to turn away and say, "They are too numerous for the Senate." This is my answer to the objection founded on numbers.

But this is not all. You did not shrink, during the war, from the numerous nominations of military officers, counting by thousands; nor did you shrink from the numerous nominations of naval officers, counting by thousands. The power over all these you never relaxed, and I know well you never will relax. You know, that, even if unable to consider carefully every case, yet the power over them enables you to inter-

pose a veto on any improper nomination. The power of the Senate is a warning against tyranny in the Executive. But it is difficult to see any strong reason for this power in the case of the army and navy which is not applicable also to civil officers. This I should say in tranquil times; but there is another reason peculiar to the hour. Even if in tranquil times I were disposed to leave the appointing power as it is, I am not disposed to do so now.

Then, again, we are told that we must not abandon the system of our fathers. I have already answered this objection precisely, in saying, that, whatever may have been the system of the Fathers, it is inadequate to the present hour. But I am not satisfied that the proposition moved by me is inconsistent with the system of the Fathers. The officers of the Internal Revenue did not exist then, and the inferior officers of the customs were few in number and with small emoluments. But all district attorneys and marshals, even if their salary was no more than two hundred dollars, were subject to the confirmation of the Senate.

Mr. Edmunds. And so they are yet.

Mr. Sumner. And so they are yet. But can the Senator doubt, that, if, at the time when those officers were made subject to the confirmation of the Senate, weighers and gaugers and inspectors had been as well paid as they are now, they, too, would have been brought under the control of this body? I cannot.

Mr. Edmunds. I do not think they would.

Mr. Sumner. But even if the Senator does not accept the view which I present on the probable course

of our fathers, he cannot resist the argument, that, whatever may have been the old system, we must act now in the light of present duties. I repeat, a system good for our fathers may not be good for this hour, which is so full of danger.

Then, again, we are told, with something of indifference, if not of levity, that it is not the duty of the Senate to look after the "bread and butter" of office-holders. This is a familiar way of saying that these small cases are not worthy of the Senate. Not so do I understand our duties. There is no case so small as not to be worthy of the Senate, especially if in this way you can save a citizen from oppression and weaken the power of an oppressor.

Something has been said about the curtailment of the Executive power, and the Senator from Maine [Mr. FESSENDEN] has even argued against the amendment as conferring upon the President additional powers. This is strange. The effect of the amendment is, by clear intendment, to take from the President a large class of nominations and bring them within the control of the Senate. Thus it is obviously a curtailment of Executive power, which I insist has become our bounden duty. The old resolution of the House of Commons, moved by Mr. Dunning, is applicable here: "The influence of the Crown has increased, is increasing, and ought to be diminished." In this spirit we must put a curb on the President, now maintaining illegitimate power by removals from office.

Mr. President, I have used moderate language, strictly applicable to the question. But it is my duty to remind you how much the public welfare depends upon

courageous counsels. Courage is now the highest wisdom. Do not forget that we stand face to face with an enormous and malignant usurper, through whom the Republic is imperilled, — that Republic which, according to our oaths of office, we are bound to save from all harm. The lines are drawn. On one side is the President, and on the other side is the people of the United States. It is the old pretension of prerogative, to be encountered, I trust, by that same inexorable determination which once lifted England to heroic heights. The present pretension is more outrageous, and its consequences are more deadly; surely the resistance cannot be less complete. An American President must not claim an immunity denied to an English king. In the conflict he has so madly precipitated, I am with the people. In the President I put no trust, but in the people I put infinite trust. Who will not stand with the people?

Here, Sir, I close what I have to say at this time. But before I take my seat, you will pardon me, if I read a brief lesson, which seems written for the hour. The words are as beautiful as emphatic.

"The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves, and then we shall save our country."

These are the words of Abraham Lincoln.[1] They are as full of vital force now as when he uttered them. I entreat you not to neglect the lesson. Learn from its teaching how to save our country.

[1] Annual Message, December 1, 1862: Executive Documents, 37th Cong. 3d Sess., House, No. 1, p. 23.

Mr. Edmunds and Mr. Reverdy Johnson replied. Mr. Howe, of Wisconsin, and Mr. Lane, of Indiana, favored the amendment. Mr. Johnson suggested that the expression of opinion adverse to the President would disqualify a Senator to sit on his impeachment. Mr. Sumner interrupted him to say : —

What right have I to know that the President is to be impeached ? How can I know it ? And let me add, even if I could know it, there can be no reason in that why I should not argue the measure directly before the Senate, and present such considerations as seem to me proper, founded on the misconduct of that officer.

Mr. Sumner here changed his amendment by striking out the limitation of $1,000 and inserting $1,500. He then said : —

I make the change in deference to Senators about me, and especially yielding to the earnest argument of the Senator from Vermont [Mr. EDMUNDS], who was so much disturbed by the idea that the Senate would be called to act upon inspectors. My experience teaches me not to be disturbed at anything. I am willing to act on an inspector or a night watchman ; and if I could, I would save him from Executive tyranny. The Senator would leave him a prey, so far as I can understand, for no other reason than because he is an inspector, an officer of inferior dignity, and because, if we embrace all inspectors, we shall have too much to do.

Sir, we are sent to the Senate for work, and especially to surround the citizen with all possible safeguards. The duty of the hour is as I have declared. It ought not to be postponed. Every day of postponement is to my mind a sacrifice. Let us not, then, be deterred even by the humble rank of these officers, or

by their number, but, whether humble or numerous, embrace them within the protecting arms of the Senate.

The amendment was rejected, — Yeas 16, Nays 21. After further debate, the bill passed the Senate, — Yeas 29, Nays 9. It then passed the House with amendments. To settle the difference between the two Houses, there was a Committee of Conference, when the bill agreed upon passed the Senate, — Yeas 22, Nays 10, — and passed the House, — Yeas 112, Nays 41. March 2d, the bill was vetoed, when, notwithstanding the objections of the President, it passed the Senate, — Yeas 35, Nays 11, — and passed the House, — Yeas 138, Nays 40, — and thus became a law.[1]

[1] Statutes at Large, Vol. XIV. pp. 430–432.

DENUNCIATION OF THE COOLIE TRADE.

Resolution in the Senate, from the Committee on Foreign Relations, January 16, 1867.

The following resolution was reported by Mr. Sumner, who asked the immediate action of the Senate upon it.

WHEREAS the traffic in laborers transported from China and other Eastern countries, known as the Coolie trade, is odious to the people of the United States as inhuman and immoral;

And whereas it is abhorrent to the spirit of modern international law and policy, which have substantially extirpated the African slave-trade, to permit the establishment in its place of a mode of enslaving men different from the former in little else than the employment of fraud instead of force to make its victims captive: Therefore

Be it resolved, That it is the duty of this Government to give effect to the moral sentiment of the Nation through all its agencies, for the purpose of preventing the further introduction of coolies into this hemisphere or the adjacent islands.

The resolution was adopted.

CHEAP BOOKS AND PUBLIC LIBRARIES.

Remarks in the Senate, on Amendments to the Tariff Bill reducing the Tariff on Books, January 24, 1867.

The Senate having under consideration the bill to provide increased revenue from imports, Mr. Edmunds, of Vermont, moved to retain the following articles on the free list: —

"Books, maps, charts, and other printed matter, specially imported in good faith for any public library or society, incorporated or established for philosophical, literary, or religious purposes, or for the encouragement of the fine arts."

Mr. Sumner said: —

MR. PRESIDENT, — By the existing law, public libraries and literary societies receive books, maps, charts, and engravings free of duty. It is now proposed to change the law, so that public libraries and literary societies shall no longer receive books, maps, charts, and engravings free of duty. It is a little curious that the present moment is seized for this important change, which I must call retrogressive in character. It seems like going back to the Dark Ages. We made no such change during the war. We went through all its terrible trials and the consequent taxation without any such attempt. Now that peace has come, and we are considering how to mitigate taxation, it is proposed to add this new tax.

Mr. Hendricks. Will the Senator allow me to ask whether he regards this bill as a mitigation of the taxes upon goods brought from foreign countries?

Mr. Sumner. I am not discussing the bill as a general measure.

Mr. Hendricks. I thought the Senator spoke of the present effort to mitigate taxation.

Mr. Sumner. I believe I am not wrong, when I say there is everywhere a disposition to reduce taxation, whether on foreign or domestic articles. Such is the desire of the country and the irresistible tendency of things. But what must be the astonishment, when it appears, that, instead of reducing a tax on knowledge, you augment it!

I insist, that, in imposing this duty, you not only change the existing law, but you depart from the standing policy of republican institutions. Everywhere we have education at the public expense. The first form is in the public school, open to all. But the public library is the complement or supplement of the public school. As well impose a tax on the public school as on the public library.

I doubt if the Senate is fully aware of the number of public libraries springing into existence. This is a characteristic of our times. Nor is it peculiar to our country. Down to a recent day, public libraries were chiefly collegiate. In Europe they were collegiate or conventual. There were no libraries of the people. But such libraries are now appearing in England and in France. Every considerable place or centre has its library for the benefit of the neighborhood. But this movement, like every liberal tendency, is more marked in the United States. Here public libraries are coming

into being without number. The Public Library of Boston and the Astor Library of New York are magnificent examples, which smaller towns are emulating. In my own State there are public libraries in Lowell, Newburyport, New Bedford, Worcester, Springfield, — indeed, I might almost say in every considerable town. But Massachusetts is not alone. Public libraries are springing up in all the Northern States. They are now extending like a belt of light across the country. They are a new Zodiac, in which knowledge travels with the sun from east to west. Of course these are all for the public good. They are public schools, where every book is a schoolmaster. To tax such institutions now, for the first time, is a new form of that old enemy, a "tax on knowledge." Such is my sense of their supreme value that I would offer them bounties rather than taxes.

In continuation of this same hospitality to knowledge, I wish to go still further, and relieve imported books of all taxes, so far as not inconsistent with interests already embarked in the book business. For instance, let all books, maps, charts, and engravings printed before 1840 take their place on the free list. Publications before that time cannot come in competition with any interests here. The revenue they afford will be unimportant. The tax you impose adds to the burdens of scholars and professional men who need them. And yet every one of these books, when once imported, is a positive advantage to the country, by which knowledge is extended and the public taste improved. I would not claim too much for these instructive strangers belonging to another generation. I think I do not err in asking for them a generous welcome. But, above all, do not tax them.

It is sometimes said that we tax food and clothes, therefore we must tax books. I regret that food or clothes are taxed, because the tax presses upon the poor. But this is no reason for any additional tax. Reduce all such taxes, rather than add to them. But you will not fail to remember the essential difference between these taxes. In New England education from the beginning was at the public expense; and this has been for some time substantially the policy of the whole country, except so far as it was darkened by Slavery. Therefore I insist, that, because we tax food and clothes for the body, this is no reason why we should tax food and clothes for the mind.

The question, being taken by yeas and nays, resulted, — Yeas 22, Nays 13; so the amendment was adopted.

Mr. Sumner then moved to exempt "maps, charts, and engravings executed prior to 1840." He said that this amendment was naturally associated with that on which the Senate had just acted; that there could be no competition with anything at home.

In reply to Mr. Williams, of Oregon, Mr. Sumner again spoke.

Mr. President, — There is no question of the exemption of those who are best able to pay these duties; it is simply a question of a tax on knowledge. The Senator by his system would shut these out from the country, and would say, "Hail to darkness!" I do not wish to repeat what I have so often said; but the argument of the Senator has been made here again and again, and heretofore, as often as made, I have undertaken to answer it. He says we put a tax on necessaries now, — on the food that fills the body, on the garments that clothe the body. I regret that we do. I wish we were in a condition to relieve the country of such taxation. But does not the Senator bear in

mind that he proposes to go further, and to depart from the great principle governing our institutions from the beginning of our history? We have had education free: in other words, we have undertaken to fill the mind and to clothe the mind at the public expense. We never did undertake to fill the body or to clothe the body at the public expense. Sir, as a lover of my race, I should be glad, could the country have clothed the body and filled the body at the public expense. I should be glad, had society been in such a condition that this vision could be accomplished; but we all know that it is not, and I content myself with something much simpler and more practical. I would aim to establish the principle which seems to have governed our fathers, and which is so congenial with republican institutions, that education and knowledge, so far as practicable, shall be free.

To make education and knowledge free, you must, so far as possible, relieve all books from taxation. I have already said that I did not propose to interfere with any of the practical interests of the book trade; but, where those interests are out of the way, I insist that the great principle of republican institutions should be applied. This is my answer to the Senator from Oregon. I fear he has not adequately considered the question. He has not brought to it that knowledge, that judgment, which always command my respect, as often as he addresses the Senate. He seems to have spoken hastily. I hope that he will withdraw, or at least relax, his opposition, and, revolving the subject hereafter, range himself, as he must, with his large intelligence, on the side of human knowledge.

Then, again, in reply to Mr. Conness, of California, Mr. Sumner remarked : —

It is because I hearken to the needs of my country that I make this proposition. I am not to be led aside by the picture of other necessities. I respect all the necessities of the people; but among the foremost are those of public instruction, and it is of those I am a humble representative on this floor. The Senator from California may, if he chooses, treat that representation with levity; he may announce himself an opponent of the policy which I would establish for my country; he may set himself against what I insist is a fundamental principle of republican institutions, that knowledge should not be taxed; he may go forth and ask for taxation on books and on public libraries, and, if he chooses, carry the principle still further, and tax the public school. He will then be consistent with himself. I hope that he will allow me to speak for what I believe the true need of the country.

The motion to exempt maps, charts, and engravings was rejected.

Mr. Sumner then moved to place on the free list "books printed prior to 1840." It being objected, that "the duty as already laid was very low, only 15 per cent.," — that "we have to look to revenue," — and that it was desirable "to have all the interests of the country taxed," — Mr. Sumner replied : —

Every argument for making the duty low is equally strong against having any duty on the subject. There is no reason that could have influenced the Committee in favor of reducing the duty which is not equally strong in favor of removing the duty. The Senator declares that the object is revenue. But the revenue that will come from this source is very small; it is not large enough to compensate for the mischief it will

cause. Sir, I believe all the conclusions of the best experienced in taxation are, that we should seek as much as possible to diminish the objects of taxation. Just in proportion as nations become experienced in imposing taxes do they limit the objects to which the taxes are applied. It seems to me we are strangely insensible to that lesson of history. We seem to be groping about and seizing hold of every little object, every filament, if I may so express myself, which we can grasp, in order to drag it into the sphere of taxation.

I think we should be better employed, if we declined to tax a large number of articles which it is proposed to tax, and brought our taxation to bear on a few important articles, which we should make contribute substantially to the resources of the country. The tax that is now proposed will contribute nothing of any real substance to the resources of the country, while to my view it is not creditable. I say it frankly, it is not creditable to the civilization of our age, and least of all is it creditable to the civilization of a republic.

Such is my conviction. As often as I have thought of this question, I cannot see it in any other light; and I do think that money derived from a tax on books can be vindicated only on the principle of the Roman emperor, "Money from any quarter, no matter what, for money does not smell." [1] Now it were better, if, instead of hunting up these several articles for tax-

[1] "Lucri bonus est odor, ex re
Qualibet." — JUVENAL, *Sat.* XIV. 204, 205.

An allusion to the familiar anecdote of Vespasian: "Reprehendenti filio Tito, quod etiam urinæ vectigal commentus esset, pecuniam ex prima pensione admovit ad nares, sciscitans, num odore offenderetur; et illo negante, 'Atqui,' inquit, 'e lotio est.'" — SUETONIUS, *Vespasianus*, c. 23. See the Commentators generally.

ation, running them down like game, to bag them in the public treasury, we should confine ourselves to the great subjects, and make them productive. There are enough of them, and in this way we can have revenue enough. I would have all the revenue we want; but, having it, be hospitable to literature, to knowledge, to art; and now let me say, be hospitable to books, because through books you will obtain what you desire in literature, in knowledge, and in art.

Mr. Kirkwood, of Iowa, thought Mr. Sumner ought to be content with what was done. "If he gets the rate reduced from 25 to 15 per cent., when the taxes on everything we eat and wear are being raised 20, 30, 40, or 50 per cent., I think that he ought to be content."

Mr. Sumner. Personally I am content with anything. I am trying to do what I think best for the people. I may be mistaken in my judgment; and when I see so many distinguished Senators so earnestly differing from me, I am led to call in question my conclusions; and yet considerable reflection and some experience in dealing with this question have always brought me more strongly than before to the same unalterable conclusion. I feel, that, in imposing this tax, you make a great mistake; because it is a bad example, and just to the extent of its influence keeps knowledge out of the country.

The motion of Mr. Sumner was rejected, — Yeas 5, Nays 32. Another motion by him, to exempt mathematical instruments and philosophical apparatus imported for societies, shared the same fate.

CHEAP COAL.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE TARIFF BILL, JANUARY 29, 1867.

JANUARY 29th, the Senate having under consideration the bill to provide increased revenue from imports, known as the Tariff Bill, Mr. Sumner moved the following: —

"On all bituminous coal mined and imported from any place not more than thirty degrees of longitude east of Washington, fifty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

The effect of this amendment would be to reduce the duty from $1.50 to 50 cents a ton.

MR. PRESIDENT, — The object of the amendment is to bring the bill back where it was at first. The Senate will remember that in committee a motion prevailed by which the duty of 50 cents per ton on the coal mentioned was raised to $1.50. I am at a loss to understand the precise object of this increased tax on coal. There are strong reasons against any tax on coal; and the reasons are stronger still against this increased tax. Its movers must have an object. What is it?

It seems that there are imported into the United States about 500,000 tons, being 350,000 from the British Provinces and 150,000 from Great Britain; and this coal is to be taxed at the rate of $1.50 a ton in gold.

If the same amount of importation continued, this tax would yield $750,000 in gold, — a handsome addition to the revenue. But I am sure the tax is not imposed on this account. It is imposed with some vague hope of benefit to the coal interest. But here, as we look at it, we are mystified. Is it supposed that the price of coal throughout the country will be raised to this extent? The idea is monstrous. There are some 22,000,000 tons now produced, which, if raised in price according to this tax, will cost the country 33,000,000 gold dollars in addition to the present price. This might be advantageous to certain proprietors, but it must be damaging to the country. Nobody can expect this. The object, then, is something else. I will not say that it is merely to take advantage of the States that do not produce coal, for this would be sheer oppression. I suppose that it must be to exclude foreign coal, and to that extent open the market for domestic coal.

But this tax will be positively oppressive to coal-purchasers in New England, to say nothing of New York. Nature has denied coal to this region of country, — or rather, Nature has placed the natural supply for this region outside our political jurisdiction. It is in Nova Scotia, on the other side of our boundary line. Coal in abundance is there, easily accessible by water, and therefore transported at comparatively small cost. Another part of our country has a different supply. On the other side of the mountain-ridge separating the sea-coast from the valleys of the West is an infinite coal-field, the source of untold wealth, which, beginning in the mountains and filling West Virginia and Western Pennsylvania, stretches through the val-

ley of the Ohio, enriching the States that border upon it, and then, crossing the Mississippi, extends through other States beyond, even to Colorado. This is the greatest coal-field, as it is also the greatest corn-field, in the world. It is magnificent beyond comparison. This is the natural resource for the immense region west of the Alleghanies. But why should New England, which has a natural resource comparatively near at home, be compelled at great sacrifice to drag her coal from these distant supplies?

I hear of complaint at Pittsburg, where the price of coal is only two dollars a ton, currency. But imported coal in New England costs at the mine two dollars a ton, gold. Add three or four dollars a ton for freight. And now it is proposed to pile on this a duty of more than two dollars, currency. If Pittsburg complains of coal at two dollars a ton, what must Boston say, when you make it nine dollars? Is this just? Is it practically wise? But I forget: there can be no wisdom without justice.

If it be said that the interests of New England are protected even by the bill before the Senate, I have to say in reply, that no interest of hers is protected at the expense of the rest of the country. All that we ask is fair play. Let it be shown that there is any part of the country which will suffer from the favor accorded to New England as her coal-purchasers must suffer from the favor accorded to the distant coal-owners of the mountains, and I will do what I can to see justice done. I ask nothing but that justice which I am always willing to accord. We constitute parts of one country with common interests, and the prosperity of each is bound up in the prosperity of all.

It is said that this proposed tax will be of advantage to the Cumberland coal in the mountains of Maryland. Perhaps; but not to any considerable extent. I understand that not more than 60,000 tons of Nova Scotia coal are imported in competition with that of Cumberland. This is mainly at Providence, where it is used in the manufacture of iron. But the Cumberland coal is so completely adapted to glass-works, railways, ocean steamships, blacksmiths' forges, that it may be said to command the market exclusively. Nature has given to it this monopoly. Why not be content?

There are peculiar reasons why coal should be cheap, whether viewed as a necessary or as a motive power. As a necessary, it enters into the comforts of life; as a motive power, it is the substitute for water-power. What reason can you give for a tax on motive power from coal which is not equally strong for a tax on motive power from water, unless it be that one is "black" and the other is "white"? I plead that you shall not needlessly add to the public burden in a particular portion of the country. I have alluded to the cheapness of coal at Pittsburg. In other places it is cheaper still. At Pomeroy, in Ohio, it is $1.40 a ton, and at Cumberland itself it is $1.50 a ton, always currency; and yet New England is to pay $1.50 tax, gold, being more than the coal is worth to its producer, besides the large cost of transportation.

Next after the industry of a people is cheap coal, as an element of national prosperity. Without it, even industry will lose much of its activity and variety. It is coal that has vitalized and quickened all the mighty energies of England. From coal have come all the vari-

ous products of her manufactories, and these again have furnished the freights for her ships, so that she has become not only a great manufacturing nation, but also a great commercial nation. Coal is the author of all this. Coal is the fuel under the British pot which makes it boil. It ought to do the same for us, and even more, if you will let it. Therefore I end as I began, — tax coal as little as possible.

In reply especially to Mr. Reverdy Johnson, of Maryland, and Mr. Sherman, of Ohio, Mr. Sumner said: —

. . . . .

Now, without following the Senator from Kentucky [Mr. Davis] in that proposition, I do insist, that, on articles of prime necessity, we should reduce taxation where we can. Therefore, when the Senator from Ohio tells me, that, if my proposition is adopted, we shall lose a certain amount of revenue derived from coal, I have an easy reply. Very well, — let us lose that amount of revenue derived from coal. You ought not to obtain it; coal ought not to be one of your taxed articles. So far as possible, coal should be cheap. That is the proposition with which I began and ended; and if I do not impress that upon the Senate, I certainly fail in what I attempted.

Mr. Grimes [of Iowa]. Why should it be cheap?

Mr. Sumner. Because it enters into the necessaries of life, and because it is a motive power that works our manufactories.

. . . . .

I say that the article is necessary to us in New England. It enters into our daily life,— into the economies of every house, into the expenses of every citizen. It enters, therefore, into the welfare of the com-

munity; and you cannot tax coal without making the whole community feel it, whether rich or poor. Every poor man feels it. If I said the rich man felt it, you would reply, "That makes no difference; let him feel it." I insist that every poor man feels it; and I insist further, that all who are interested in the manufactures of the country necessarily feel it, — not only producers and owners, but all who use the products of their looms. I say, that, as a motive power, it should be made cheap and kept cheap. Now the apparent policy is, to make it dear and keep it dear.

Mr. Hendricks [of Indiana]. I like the Senator's argument just where he is now; but I wish to ask him whether, if by a tariff you raise the price of every yard of cheap woollen goods and cheap cotton goods, it is not a direct tax on the labor of the poor man of the West, who has to buy them?

Mr. Creswell [of Maryland, to Mr. Sumner]. That is the application of your argument.

Mr. Sumner. The Senator from Maryland says that is the application of my argument. Pardon me, not at all; because the tax on cotton and on woollen goods — I have had very little to do with imposing any such tax — is not oppressive on any part of the country, nor does it bear hard on the constituents of the Senator, or on the constituents of any Senator on this floor; whereas the increase of the tax on coal will bear hard upon a whole community, and upon all its interests; and that is the precise difference between the two cases.

The Senator from Ohio seemed to speak of this with perfect tranquillity, as if there were nothing in it oppressive, or even open to criticism. He thought we might tax coal as we tax any other article. I differ

from him. I do not think you should tax coal as you tax other articles; and, further, I do not think you should impose any tax bearing with special hardship, so as to be something akin to injustice, on any particular part of our country. That is my answer to the argument of the Senator from Maryland, and to the inquiry of the Senator from Indiana.

Mr. Creswell replied warmly, criticizing Mr. Sumner, saying, among other things, —

"The distinguished Senator from Massachusetts has treated us to a Free-Trade speech in the Senate of the United States. The commentary of the Senator from Indiana was just and correct; it was a deduction that he had a right logically to make; and I tell the Senator from Massachusetts that his course in the Senate to-day is in its effects a better Free-Trade speech than has ever been made in any of the Middle States during the last ten years."

Mr. Wilson, of Massachusetts, united with Mr. Sumner.

The amendment was lost, — Yeas 11, Nays 25.

A SINGLE TERM FOR THE PRESIDENT, AND CHOICE BY DIRECT VOTE OF THE PEOPLE.

Remarks in the Senate, on an Amendment of the National Constitution, February 11, 1867.

The Senate had under consideration an Amendment to the National Constitution, reported by the Judiciary Committee, as follows : —

"No person elected President or Vice-President, who has once served as President, shall afterward be eligible to either office."

Mr. Fessenden, of Maine, thought that the words "who has once served as President" should be struck out. Mr. Williams, of Oregon, suggested : "No person who has once served as President shall afterward be eligible to either office." Mr. Poland, of Vermont, moved, as a substitute, the following : —

"The President and Vice-President of the United States shall hereafter be chosen for the term of six years; and no person elected President or Vice-President, who has once served as President, shall afterward be eligible to either office."

Mr. Sumner said : —

I AGREE with the Senator from Maryland [Mr. Johnson], so far as I was able to follow his remarks. It seems to me it would be better, if the term of the President were six years rather than four. I regretted that the report of the Committee did not embody such a change. I am therefore thankful to the Senator from Vermont, who by his motion gives us an opportunity to vote on that proposition.

But allow me to go a little further, and there I should like the attention of my friend opposite [Mr. JOHNSON]. If the term of the President is to be six years, should we not abolish the office of Vice-President? Are you willing to take the chance of a Vice-President becoming President a few weeks after the beginning of the six years' term, and then serving out that full term? We all know, in fact, that the Vice-President is nominated often as a sort of balance to the President. It is too much with a view to certain political considerations, and possibly to aid the election of the President, rather than to secure the services of one in all respects competent to be President. Suppose, therefore, we have a President only, and leave to Congress the provision for a temporary filling of the office, as now on the disability of the President and Vice-President.

I throw out these views without making any motion. I submit that we do not meet all the difficulties of the present hour, unless we go still further and provide against abnormal troubles from the nomination of a Vice-President selected less with reference to fitness than to transient political considerations. As my friend says, he is thrown in for a make-weight, and then, in the providence of God, the make-weight becomes Chief Magistrate. It seems to me important, that, if possible, we should provide against the recurrence of such difficulties.

But suppose the proposition of the Committee to stand as reported, I am brought then to the question raised by the Senator from Maine [Mr. FESSENDEN], whether it should be applicable to a Vice-President in the providence of God called to be President. On

that point I am obliged to go with the Committee. It seems to me that the evil we wish to guard against in the case of the President naturally arises in the case of a Vice-President who becomes President. I say this on the reason of the case, and then I say it on our melancholy experience. The three cases in our history which distinctly teach the necessity of the Amendment before us are of three Vice-Presidents who in the providence of God became Presidents. But for these three cases, nobody would have thought of change. It is to meet the difficulties found to arise from a Vice-President becoming President, and then hearkening to the whisperings and temptations which unhappily visit a person in his situation, that we have been led to contemplate the necessity of change. I hope, therefore, if the proposition of the Senator from Vermont [Mr. POLAND] is not taken as a substitute, that the words of the Committee will be preserved.

I am disposed to go still further. I would have an additional Amendment, — one that has not appeared in this discussion, though not unknown in this Chamber, for distinguished Senators who once occupied these seats have more than once advocated it, — I mean an Amendment providing for the election of President directly by the people, without the intervention of Electoral Colleges. Such an Amendment would give every individual voter, wherever he might be, a positive weight in the election. It would give minorities in distant States an opportunity of being heard in determining who shall be Chief Magistrate. Now they are of no consequence. Such an Amendment would be of peculiar value. It would be in harmony, too, with those ideas, belonging to the hour, of the unity

of the Republic. I know nothing that would contribute more to bring all the people, to mass all the people, into one united whole, than to make the President directly eligible by their votes. But no such proposition is before us, nor is there any such proposition as I have alluded to with regard to the office of Vice-President. I hope, however, that these subjects will not be allowed to pass out of mind, and that some time or other we shall be able to act on them in a practical way.

After debate, the question was dropped without any vote.

RECONSTRUCTION AT LAST WITH COLORED SUFFRAGE AND PROTECTION AGAINST REBEL INFLUENCE.

SPEECHES IN THE SENATE, ON THE BILL TO PROVIDE FOR THE MORE EFFICIENT GOVERNMENT OF THE REBEL STATES, FEBRUARY 14, 19, AND 20, 1867.

THE subject of Reconstruction was uppermost during the present session, sometimes in Constitutional Amendments and sometimes in measures of legislation.

February 13th, the Senate received from the House of Representatives a bill "to provide for the more efficient government of the Insurrectionary States," which, after various changes, was finally passed under the title of "An Act to provide for the more efficient government of the Rebel States," being the most important measure of legislation in the history of Reconstruction. As this bill came from the House it was a military bill, creating five military districts in the South, without any requirement with regard to suffrage, and with no exclusion of Rebels. Mr. Bingham, of Ohio, and Mr. Blaine, of Maine, announced in the House amendments requiring in the new constitutions "that the elective franchise shall be enjoyed by all male citizens of the United States twenty-one years old and upward, without regard to race, color, or previous condition of servitude, except such as may be disfranchised for participating in the late Rebellion or for felony at Common Law." But they had not been able to obtain a direct vote; nor was there any exclusion of Rebels in their propositions. Mr. Stevens, of Pennsylvania, said: —

"The amendment of the gentleman from Maine [Mr. BLAINE] lets in a vast number of Rebels and shuts out nobody. All I ask is, that, when the House comes to vote upon that amendment, it shall understand that the adoption of it would be an entire surrender of those States into the hands of the Rebels."

About this time the House passed what was known as the Louisiana Bill, being a bill providing for the reconstruction of that State, with all necessary machinery, not unlike the bill introduced on the first day of the preceding session, "to enforce the guaranty of a republican form of government in certain States whose governments have been usurped or overthrown."[1] The two bills together would have made a complete system of Protection, and the second, when extended to all the States, a complete system of Reconstruction.

February 14th, Mr. Sumner said: —

I AM in favor of each of these bills. Each is excellent. One is the beginning of a true Reconstruction; the other is the beginning of a true Protection. Now in these Rebel States there must be Reconstruction and there must be Protection. Both must be had, and neither should be antagonized with the other. The two should go on side by side, — guardian angels of the Republic. Never was Congress called to consider measures of more vital importance. I am unwilling to discriminate between the two. I accept them both with all my heart, and am here now to sustain them by my constant presence and vote.

But, Sir, what we know as the Louisiana Bill came into this Chamber first; it was first made familiar to us; it has precedence. On that account it seems to me it ought to come up first, it ought to lead the way. I am not going to say that this is better than the other, or that the other is better than this. Each is good; and yet, I doubt not, each is susceptible of amendment. The Senator from Maine [Mr. FESSENDEN] has already foreshadowed an important amendment on the bill reported by the Committee of which he is Chairman; I have already sent to the Chair an amendment which at the

[1] *Ante*, Vol. XIII. pp. 21, seqq.

proper time I may move on the other bill. But I desire to make one remark with regard to amendments. I am so much in earnest for the passage of these bills, that I shall cheerfully forego any amendment of my own, if I find it to be the general sentiment of those truly in earnest for the bills that we ought not to attempt amendments. If, however, amendments seem to be preferable, then I shall propose those I have sent to the Chair.

February 15th, the Senate began the consideration of the Military Bill, continuing in session until three o'clock in the morning of the next day. Speeches and motions showed great differences on the subject. Some were content with a purely military bill, contemplating simply the protection of the people in the Rebel States. Others wished to add measures of Reconstruction; and here again there were differences. Some were content with the requirement of suffrage without distinction of color in the new constitutions, making no provision for the exclusion of Rebels, leaving the organization in the hands of the existing electors, and providing, that, on the adoption of the Constitutional Amendment, and of a State constitution securing equal suffrage, any such State should be entitled to representation in Congress.

In the hope of putting an end to these differences, a caucus of Republican Senators was held the next forenoon, when a committee was appointed, as follows: Mr. Sherman, of Ohio, Mr. Fessenden, of Maine, Mr. Howard, of Michigan, Mr. Harris, of New York, Mr. Frelinghuysen, of New Jersey, Mr. Trumbull, of Illinois, and Mr. Sumner, to consider the pending bill and amendments and report to the caucus. The committee withdrew from the Senate, leaving a Senator making a long and elaborate speech, and proceeded with their work. The House bill was taken as the basis, and amended in several particulars, to which Mr. Sumner afterwards alluded in the Senate. An effort by Mr. Sumner to require equal suffrage found no favor; nor did what was known as the Louisiana Bill, which he proposed as a substitute; nor an effort to exclude Rebels. He felt it his duty to say to the committee, that, on the making of the report, he should appeal to the caucus, which he did. The caucus, by 15 Yeas to 13 Nays, — Senators standing to be counted, — voted to require equal suffrage in the choice of the constitutional conventions; also in the

new constitutions, and in their ratification. But the bill was left without any exclusion of Rebels, and with the declaration, that, doing these things and ratifying the Amendment to the National Constitution, a State should be entitled to representation in Congress. In these latter respects it seemed to Mr. Sumner highly objectionable.

The vote of the caucus to require suffrage without distinction of color seemed a definitive settlement of that question for the Rebel States. At that small meeting, and by those informal proceedings, this great act was accomplished. For Mr. Sumner it was an occasion of especial satisfaction, as his long-continued effort was crowned with success. These volumes show how, by letter, speech, resolution, and bill, he had constantly maintained this duty of Congress. His bill, introduced on the first day of the preceding session, "to enforce the guaranty of a republican form of government in certain States whose governments have been usurped or overthrown," contained the specific requirement now adopted, while the debates on the Louisiana Bill,[1] the Colorado Bill,[2] the Nebraska Bill,[3] and the Constitutional Amendment,[4] attested his endeavor to apply this requirement.

During the evening session, Mr. Sherman, chairman of the caucus committee, moved the bill accepted by the caucus, as a substitute for the House bill. It was understood that it would receive the support of the Republican Senators without further amendment, and, as they constituted a large majority, its passage was sure. Under these circumstances, Mr. Sumner left the Chamber at midnight. The vote was taken a little after six o'clock, Sunday morning, — Yeas 29, Nays 10.

In the other House, the substitute of the Senate was the occasion of decided differences, not unlike those in the Senate on the House bill. Many felt that the Unionists were left without adequate protection. Mr. Stevens, of Pennsylvania, after saying that the Senate had sent "an amendment which contains everything else but protection," exclaimed: "Pass this bill and you open the flood-gates of misery, — you disgrace, in my judgment, the Congress of the United States." Mr. Boutwell, of Massachusetts, said: "My objection to the proposed substitute of the Senate is fundamental, it is conclusive. It provides, if not in terms, at least in fact, by the measures which it proposes, to reconstruct those State governments at once through the agency of disloyal men." Mr. Williams, of Pennsylvania, said: "We sent to the Senate a proposition to meet the necessities of the hour, which was Protection without Reconstruction, and it sends back another, which is Reconstruction without Protection." At length, on motion of Mr. Ste-

[1] *Ante*, Vol. XII. pp. 179, seqq.
[2] *Ante*, Vol. XIII. pp. 346, seqq.
[3] *Ante*, pp. 128, seqq.
[4] *Ante*, Vol. XIII. pp. 115, seqq.

vens, the House refused to concur in the amendment of the Senate, and asked a committee of conference on the disagreeing votes of the two Houses.

February 19th, the excitement of the House was again transferred to the Senate, where Mr. Williams, of Oregon, moved that the Senate insist upon its amendment, and agree to the conference. An earnest debate ensued, in which Mr. Sumner favored the conference committee, and also explained what he wished to accomplish by the bill. Mr. Williams withdrew his motion, when Mr. Sherman moved that the Senate insist on its amendment to the House bill and that the House be informed thereof. Mr. Trumbull sustained the motion. Mr. Sumner followed.

Mr. President, — In what the Senator from Illinois [Mr. Trumbull] has said of the failure by the President to discharge his duties under existing laws I entirely agree. He touches the case to the quick. It is impossible not to see that the special difficulty of the present moment springs from the bad man who sits in the executive chair. He is the centre of our woes. More than once before I have recalled the saying of Catholic Europe, "All roads lead to Rome." So now, among us, do all roads lead to the President. We attempt nothing which does not bring us face to face with him, precisely as during the Rebellion we attempted nothing which did not bring us face to face with Jefferson Davis. I mention this, not to deter, but for encouragement. We have already conquered the chief of the Rebellion. I doubt not that we shall conquer his successor also. But this can be only by strenuous exertion. It is no argument against legislation that the President will not execute it. We must do our duty, and insist always that he shall do his.

Therefore I am in favor of some measure of Reconstruction, the best we can secure, the more thorough

the better. And I ask you to take such steps as will best accomplish this result. There is a difference between the two Houses, and at this stage the customary proceeding is a conference committee. But the Senator from Illinois is against any such committee in a case of such magnitude. To my mind his argument should be directed against the rule of Parliamentary Law which provides a conference committee at this precise stage of parliamentary proceedings. Let him move to change the Parliamentary Law, so that in cases of peculiar importance the common rule shall cease to be applicable. Let this be his thesis. But, so long as the *Lex Parliamentaria* exists, I submit that it is hardly reasonable to resist its application, especially when the House has asked a conference committee on a bill of theirs which you have amended.

. . . . .

I differ from the Senator [Mr. SHERMAN, of Ohio] radically, when he intimates that the bill needs only "slight" amendments. With this opinion I can understand that he should urge a course which I fear may cut off amendments to me essential.

Mr. President, I would speak frankly of this measure, which has in it so much of good and so much of evil. Rarely have good and evil been mixed on such a scale. Look at the good, and you are full of grateful admiration. Look at the evil, and you are impatient at such an abandonment of duty. Much is gained, but much is abandoned. You have done much, but you have not done enough. You have left undone things which ought to be done. The Senator from Maine [Mr. FESSENDEN] was right in asking more. I agree with him. I ask more. All the good of the bill cannot make me

forget its evil. It is very defective. It is horribly defective. Too strong language cannot be used in characterizing a measure with such fatal defects. But nobody recognizes more cordially than myself the good it has. Pardon me, if I do my best to make it better.

This is the original House bill for the military government of the Rebel States, revised and amended by the Senate in essential particulars. As it came from the House it was excellent in general purpose, but imperfect. It was nothing but a military bill, providing protection for fellow-citizens in the Rebel States. Unquestionably it was improved in the Senate. It is easy to mention its good points, for these are conspicuous and seem like so many monuments.

Throughout the bill, in its title, in its preamble, and then again in its body, the States in question are designated as "Rebel States." I like the designation. It is brief and just. It seems to justify on the face any measure of precaution or security. It teaches the country how these States are to be regarded for the present. It teaches these States how they are regarded by Congress. "Rebel States": I like the term, and I am glad it is repeated. God grant that the time may come when this term may be forgotten! but until then we must not hesitate to call things by their right names.

More important still is the declaration in the preamble, that "no legal State governments" now exist in the enumerated Rebel States. This is a declaration of incalculable value. For a long time, too long, we have hesitated; but at last this point is reached, destined to be "the initial point" of a just Reconstruction. For a long time, again and again, I have insisted that those governments are *illegal*. Strangely, you would not say

so. The present bill fixes this starting-point of a true policy. If the existing governments are "illegal," you have duties with regard to them which cannot be postponed. You cannot stop with this declaration. You must see that it is carried out in a practical manner. In other words, you must brush away these illegal governments, the spawn of Presidential usurpation, and supply their places. The illegal must give place to the legal; and Congress must supervise and control the transition. The bill has a special value in the obligations it imposes upon Congress. Let it find a place in the statute-book, and your duties will be fixed beyond recall.

Another point is established which in itself is a prodigious triumph. As I mention it, I cannot conceal my joy. It is the direct requirement of universal suffrage, without distinction of race or color. This is done by Act of Congress, without Constitutional Amendment. It is a grand and beneficent exercise of existing powers, for a long time invoked, but now at last grasped. No Rebel State can enjoy representation in Congress, until it has conferred the suffrage upon all its citizens, and fixed this right in its constitution. This is the Magna Charta you are about to enact. Since Runnymede, there has been nothing of greater value to Human Rights.

To this enumeration add that the bill is in its general purposes a measure of protection for loyal fellow-citizens trodden down by Rebels. To this end, the military power is set in motion, and the whole Rebel region is divided into districts where the strong arm of the soldier is to supply the protection asked in vain from illegal governments.

Look now at the other side, and you will see the defects. By an amendment of the Senate, the House bill, which was merely a military bill for protection, has been converted into a measure of Reconstruction. But it is Reconstruction without machinery or motive power. There is no provision for the initiation of new governments. There is no helping hand extended to the loyal people seeking to lay anew the foundations of civil order. They are left to grope in the dark. This is not right. It is a failure on the part of Congress, which ought to preside over Reconstruction and lend its helping hand, by securing Education and Equal Rights to begin at once, and by appointing the way and the season in which good citizens should proceed in creating the new governments.

I cannot forget, also, that there is no provision by which the freedmen can be secured a freehold for themselves and their families, which has always seemed to me most important in Reconstruction.

But all this, though of the gravest character, is dwarfed by that other objection which springs from the present toleration of Rebels in the copartnership of government. Here is a strange oblivion, showing a strange insensibility.

The Senator from Illinois [Mr. TRUMBULL] argued that the bill would put the new governments into loyal hands. Has he read it? My precise objection is, that it does not put the government into loyal hands. Look at it carefully, and you will see this staring you in the face at all points. While requiring suffrage for all, without distinction of race or color, it leaves the machinery and motive power in the hands of the existing governments, which are conducted by Rebels. There-

fore, under this bill, Rebels will initiate and conduct the work of Reconstruction, while loyal citizens stand aside. The President once said, "For the Rebels back seats." This bill says, "For the loyal citizens back seats." Nobody is disfranchised. There is no traitor, red with loyal blood, who may not play his part and help found the new government. The bill excepts from voting only "such as *may be* disfranchised for participation in the Rebellion." It does not require that any body shall be disfranchised, but leaves this whole question to the existing government, who will, of course, leave the door wide open.

Looking at this feature, I cannot condemn it too strongly. It is true that suffrage is at last accorded to the colored race; but their masters are left in power to domineer, and even to organize. With experience, craft, and determined purpose, there is too much reason to fear that all safeguards will be overthrown, and the Unionist continue the victim of Rebel power. This must not be. And you must interfere in advance to prevent it. You must exercise a just authority in disfranchising dangerous men. On this point there must be no uncertainty, no "perhaps." It is not enough to say that Rebels *may be* disfranchised; you must say *must*. Without this is surrender.

Such a surrender Congress cannot make. Therefore do I rejoice with my whole heart that the House of Representatives has given to the Senate the opportunity of reconsidering its action and taking the proper steps for amending the bill. The new governments must be on a loyal basis. Loyal people must be protected against Rebels. Here I take my stand. I plead for those good people, who have suffered as people never

suffered before. I appeal to you as Senators not to miss this precious opportunity. Take care that the bill is amended, so that it may be the fountain of peace, and not the engine of discord and oppression.

Mr. Sherman followed in an earnest speech, in the course of which the following passage occurred.

MR. SHERMAN. The Senator from Massachusetts now for the first time in the Senate has stated his opposition to this bill.

MR. SUMNER. Allow me to correct the Senator. The Senator was not here, when, at two o'clock in the morning, I denounced this amendment as I have to-day, and much more severely.

MR. SHERMAN. He now states that the ground of his opposition is, that the bill does not disfranchise the whole Rebel population of the Southern States.

MR. SUMNER. I beg the Senator's pardon. I take no such ground. I say it does not provide proper safeguards against the Rebel population. I have not opened the question to what extent the disfranchisement should go.

The motion of Mr. Sherman was agreed to, and the bill, with the Senate amendment, was returned to the House, which proceeded promptly to its consideration. The substitute of the Senate was concurred in, with a further amendment, — (1.) excluding from the conventions, and also from voting, all persons excluded from holding office under the recent Constitutional Amendment; (2.) declaring civil governments in the Rebel States provisional only and subject to the paramount authority of the United States; (3.) conferring the elective franchise upon all, without distinction of color, in elections under such provisional governments; and (4.) disqualifying all persons from office under provisional government who are disqualified by the Constitutional Amendment. The vote of the House was, — Yeas 128, Nays 46.

February 20th, in the Senate, Mr. Williams moved concurrence with the House amendments. After brief remarks by Mr. Sherman, Mr. Sumner said: —

I DIFFER from the Senator [Mr. SHERMAN], when he calls this a small matter. It is a great matter.

I should not say another word but for the singular speech of the Senator yesterday. He made some-

thing like an assault on me, because I required the very amendments the House have now made; and yet he is to support them. I am glad the Senator has seen light; but he must revise his speech of yesterday. The Senator shakes his head. What did I ask? What did I criticize? It was, that the bill failed in safeguard against Rebels. I did not say how many to exclude. I only said some must be excluded, more or less. None were excluded. That brought down the cataract of speech we all enjoyed, when the Senator protested with all the ardor of his nature, and invoked the State of Ohio behind him to oppose the proposition of the Senator from Massachusetts. And now, if I understand the Senator from Ohio, he is ready to place himself side by side with the Senator from Massachusetts in support of the amendment from the House embodying this very proposition. I am glad the Senator is so disposed. I rejoice that he sees light. To-morrow I hope to welcome the Senator to some other height.

Mr. Cowan [of Pennsylvania]. Excelsior!

Mr. Sumner. And I hope the word may be applicable to my friend from Pennsylvania also. [*Laughter.*]

But there was another remark of the Senator which struck me with astonishment. He complained that I demanded these safeguards now, and said that I had already in the bill all that I had ever demanded before, — that universal suffrage, without distinction of race or color, was secured; and, said he, "the Senator from Massachusetts has never asked anything but that." Now I can well pardon the Senator for igno-

rance with regard to what I have said or asked on former occasions. I cannot expect him to be familiar with it. And yet, when he openly arraigns me with the impetuosity of yesterday, I shall be justified in showing how completely he was mistaken.

Here Mr. Sumner referred to his speech before the Massachusetts Republican State Convention, September 14, 1865, entitled "The National Security and the National Faith, Guaranties for the National Freedman and the National Creditor," and showed how completely at that time he had anticipated all present demands.[1] He then continued : —

And yet, when I simply insisted upon some additional safeguard against the return of Rebels to power, the Senator told us that I was asking something new. Thank God, the other House has supplied the very protection which I desired; it has laid the foundation of a true peace. That foundation can be only on a loyal basis.

Two Presidents — one always to be named with veneration, another always most reluctantly — have united in this sentiment. Abraham Lincoln insisted that the new governments should be founded on loyalty; that, if there were only five thousand loyal persons in a State, they were entitled to hold the power. His successor adopted the same principle, when, in different language, he compendiously said, " For the Rebels back seats." What is now required could not be expressed better. " For the Rebels back seats," until this great work of Reconstruction is achieved.

Mr. Sherman, and Mr. Stewart, of Nevada, spoke especially in reply to Mr. Sumner, congratulating him upon his acceptance of the result. Mr. Sumner followed.

[1] *Ante*, Vol. XII. pp. 337–339.

I AM sorry to say another word; and yet, if silent, I might expose myself to misunderstanding. I accept the amendments from the other House as the best that can be had now; but I desire it distinctly understood that I shall not hesitate to insist at all times upon applying more directly and practically the true principles of Reconstruction. There is the Louisiana Bill on our table. The time, I presume, has passed for acting on it at this session; but in the earliest days of the next session I shall press that subject as constantly as I can. I believe you owe it to every one of these States to supply a government in place of that you now solemnly declare illegal. In such a government you will naturally secure a true loyalty, and I wish to be understood as not in any way circumscribing myself by the vote of to-day.

It may be that it will be best to require of every voter the same oath required of all entering Congress, which we know as the test oath. At least something more must be done; there must be other safeguards than those supplied by this very hasty and crude act of legislation. I accept it as containing much that is good, some things infinitely good, but as coming short of what a patriotic Congress ought to supply for the safety of the Republic.

Let it be understood, then, that I am not compromised by this bill, or by blandishments of Senators over the way [Messrs. SHERMAN and STEWART]. I listen to them of course with pleasure, and to all their expressions of friendship I respond with all my heart. I like much to go with them; but I value more the safety of my country. When Senators, even as powerful as the Senator from Ohio and the Senator from Nevada, take a

course which seems to me inconsistent with the national security, they must not expect me to follow.

After further debate, late in the evening of February 20th the vote was reached, and the House amendments were concurred in, — Yeas 35, Nays 7. The effect of this was to pass the bill.

March 2d, the bill was vetoed. The House, on the same day, by 138 Yeas to 51 Nays, and the Senate, by 38 Yeas to 10 Nays, passed the bill by a two-thirds vote, notwithstanding the objections of the President, so that it became a law.[1]

[1] Statutes at Large, Vol. XIV. pp. 428-430.

THE DEPARTMENT OF EDUCATION.

Remarks in the Senate, on the Bill to establish a Department of Education, February 26, 1867.

MR. PRESIDENT, — I am unwilling that this bill should be embarrassed by any question of words. I am for the bill in substance, whatever words may be employed. Call it a bureau, if you please, or call it a department; I accept it under either designation. The Senator from Connecticut [Mr. Dixon] has not too strongly depicted the necessity of the case. We are to have universal suffrage, a natural consequence of universal emancipation; but this will be a barren sceptre in the hands of the people, unless we supply education also. From the beginning of our troubles, I have foreseen this question. Through the agency and under the influence of the National Government education must be promoted in the Rebel States. To this end we need some central agency. This, if I understand it, is supplied by the bill before us.

Call it a bureau or a department; but give us the bill, and do not endanger it, at this moment, in this late hour of the session, by unnecessary amendment. Sir, I would, if I could, give it the highest designation. If there is any term in our dictionary that would impart peculiar significance, I should prefer that. In-

deed, I should not hesitate, could I have my way, to place the head of the Department of Education in the Cabinet of the United States, — following the practice of one of the civilized governments of the world. I refer to France, which for years has had in its Cabinet a Minister of Education. But no such proposition is before us. The question is simply on a name; and I hope we shall not take up time with regard to it.

The bill passed both Houses of Congress, and became a law.[1]

[1] Statutes at Large, Vol. XIV. p. 434.

MONUMENTS TO DECEASED SENATORS.

Remarks in the Senate, on a Resolution directing the Erection of such Monuments, February 27, 1867.

Mr. Poland, of Vermont, introduced a resolution directing the Sergeant-at-Arms of the Senate to see that monuments were placed in the Congressional burial-ground, in memory of Senators who had died at Washington since July 4, 1861. On the question of taking up this resolution for consideration, Mr. Sumner remarked: —

ORIGINALLY there was a reason for these monuments. Senators and Representatives dying here found their last home in the Congressional burial-ground, and these monuments covered their remains. At a later day, with increasing facilities of transportation, the custom of burial here has ceased; but the monuments, being only cenotaphs, were continued until 1861, when this custom was suspended. Meantime Death has not been less busy here, and the question is, whether the former custom shall be revived, and cenotaphs be placed in an unvisited burial-ground, to mark the spot where the remains of a Senator might have been placed, had they not been transported to repose among his family, kindred, and neighbors.

I cannot but think that the suspension of this custom of monuments, which occurred at the beginning of the war, was notice or indication that the occasion for them

had passed; and I doubt sincerely the expediency of reviving the custom, unless where an associate is actually buried here. If those dying here, but buried elsewhere, are to be commemorated by Congress in any monumental form, it seems to me better that it should be a simple tablet of stone or brass in the Capitol, where it would be seen by the visitors thronging here, and perhaps arrest the attention of their successors in public duty, teaching how Death enters these Halls. But why place an unsightly cenotaph in a forlorn burial-ground, — I may add, at considerable cost? I cannot doubt that the time has come for this expense to cease.

The resolution was referred to the Committee on the Contingent Expenses of the Senate.

A VICTORY OF PEACE.

Speech in the Senate, on a Joint Resolution giving the Thanks of Congress to Cyrus W. Field, March 2, 1867.

By a joint resolution introduced by Mr. Morgan, of New York, the President was requested "to cause a gold medal to be struck, with suitable emblems, devices, and inscription, to be presented to Mr. Field," and to "cause a copy of this joint resolution to be engrossed on parchment, and transmit the same, together with the medal, to Mr. Field, to be presented to him in the name of the people of the United States of America."

March 2d, the joint resolution was considered. After a speech from Mr. Morgan, Mr. Sumner said: —

MR. PRESIDENT, — I rejoice in every enterprise by which human industry is quickened and distant places are brought near together. In ancient days the builders of roads were treated with godlike honor. I offer them my homage now. The enterprise which is to complete the railroad connection between the Pacific and the Atlantic belongs to this class. But this is not so peculiar and exceptional as that which has already connected the two continents by a telegraphic wire. It is not so historic. It is not itself so great an epoch.

It is not easy to exaggerate the difficulty or the value of the new achievement.

The enterprise was original in its beginning and in every stage of its completion. It began by a telegraph

line connecting St. John's, the most easterly port of America, with the main continent. This was planned at the house of Cyrus W. Field, by a few gentlemen, among whom were Peter Cooper, Moses Taylor, Marshall O. Roberts, and David Dudley Field. New York and St. John's are about twelve hundred miles apart. When these two points were brought into telegraphic association, the first link was made in the chain destined to bind the two continents together. Out of this American beginning sprang efforts which ended in the oceanic cable.

In other respects our country led the way. The first soundings across the Atlantic were by American officers in American ships. The United States ship Dolphin first discovered the telegraphic plateau as early as 1853, and in 1856 the United States ship Arctic sounded across from Newfoundland to Ireland, a year before Her Majesty's ship Cyclops sailed the same course.

It was not until 1856 that this American enterprise showed itself in England, where it was carried by Mr. Field. Through his energies the Atlantic Telegraphic Company was organized in London, with a board of directors composed of English bankers and merchants, among whom was an American citizen, George Peabody. By conjoint exertions of the two countries the cable was stretched from continent to continent in 1858. Messages of good-will traversed it. The United States and England seemed to be near together, while Queen and President interchanged salutations. Then suddenly the electric current ceased, and the cable became a lifeless line. The enterprise itself hardly lived. But it was again quickened into being, and finally car-

ried to a successful close. British capital, British skill, contributed largely, and the society had for its president an eminent Englishman, the Right Honorable James Stuart Wortley; but I have always understood that our countryman was the mainspring. His confidence never ceased; his energies never flagged. Twelve years of life and forty voyages across the Atlantic were woven into this work. He was the Alpha and the Omega of a triumph which has few parallels in history.

Englishmen who took an active part in this enterprise have received recognition and honor from the sovereign. Some have been knighted, others advanced in service. Meanwhile Cyrus W. Field, who did so much, has remained unnoticed by our Government. He has been honored by the popular voice, but it remains for Congress to embody this voice in a national testimonial. If it be said that there is no precedent for such a vote, then do I reply that his case is without precedent, and we must not hesitate to make a precedent by this expression of national gratitude. Thanks are given for victories in war: give them now for a victory of peace.

The joint resolution passed both Houses without a division, and was approved by the President.[1]

[1] Statutes at Large, Vol. XIV. p. 574.

FURTHER GUARANTIES IN RECONSTRUCTION.

LOYALTY, EDUCATION, AND A HOMESTEAD FOR FREEDMEN; MEASURES OF RECONSTRUCTION NOT A BURDEN OR PENALTY.

RESOLUTIONS AND SPEECHES IN THE SENATE, MARCH 7 AND 11, 1867.

MARCH 7th, the following resolutions were introduced by Mr. Sumner, and on his motion ordered to lie on the table and be printed.

"RESOLUTIONS declaring certain further guaranties required in the Reconstruction of the Rebel States.

"*Resolved*, That Congress, in declaring by positive legislation that it possesses paramount authority over the Rebel States, and in prescribing that no person therein shall be excluded from the elective franchise by reason of race, color, or previous condition, has begun the work of Reconstruction, and has set an example to itself.

"*Resolved*, That other things remain to be done, as clearly within the power of Congress as the elective franchise, and it is the duty of Congress to see that these things are not left undone.

"*Resolved*, That among things remaining to be done are the five following.

"First. Existing governments, now declared illegal, must be vacated, so that they can have no agency in Reconstruction, and will cease to exercise a pernicious influence.

"Secondly. Provisional governments must be constituted as temporary substitutes for the illegal governments, with special authority to superintend the transition to permanent governments republican in form.

"Thirdly. As loyalty beyond suspicion must be the basis of permanent governments republican in form, every possible precaution must be adopted against Rebel agency or influence in the formation of these governments.

"Fourthly. As the education of the people is essential to the national welfare, and especially to the development of those principles of justice

and morality which constitute the foundation of republican government, and as, according to the census, an immense proportion of the people in the Rebel States, without distinction of color, cannot read and write, therefore public schools must be established for the equal good of all.

"Fifthly. Not less important than education is the homestead, which must be secured to the freedmen, so that at least every head of a family may have a piece of land.

"*Resolved,* That all these requirements are in the nature of guaranties to be exacted by Congress, without which the United States will not obtain that security for the future which is essential to a just Reconstruction."

March 11th, on motion of Mr. Sumner, the Senate proceeded to consider the resolutions. Mr. Williams, of Oregon, was not prepared to vote on these resolutions until they had received the consideration of some committee, and he moved their reference to the Committee on the Judiciary.

Mr. Sumner said : —

MR. PRESIDENT,—The Senator from Oregon has made no criticism on the resolutions, but nevertheless he objects to proceeding with them now; he desires reference, he would have the aid of a committee, before he proceeds with their consideration. If I can have the attention of the Senator, it seems to me that this will be as good as a committee. The resolutions are on the table; they are plain; they are unequivocal; they are perfectly intelligible; and they make a declaration of principle and of purpose which at this moment is of peculiar importance.

Congress has undertaken to provide for the military government of the Rebel States, and has made certain requirements with regard to Reconstruction, and there it stops. It has presented no complete system, and it has provided no machinery. From this failure our friends at the South are at this moment in the greatest anxiety. They are suffering. Former Rebels, or persons representing the Rebellion, are moving under our

bill to take a leading part. Already the Legislature of Virginia, packed by Rebels, full of the old Rebel virus, has undertaken to call a convention under our recent Act. Let that convention be called, and what is the condition of those friends to whom you owe protection? Unless I am misinformed by valued correspondents, the position of our friends will be very painful. I have this morning a letter from Mr. Botts, — I mention his name because he is well known to all of us, and I presume he would have no objection to being quoted on this floor, — in which he entreats us to provide some protection for him and other Unionists against efforts already commenced by Rebels or persons under Rebel influence.

I am anxious for practical legislation to that end; but, to pave the way for such legislation, I would have Congress, at the earliest possible moment, make a declaration in general terms of its purposes. The Senator says these resolutions do not propose practical legislation. I beg the Senator's pardon: they do not propose what we call legislation, but they announce to these Rebel States what we propose to do; they foreshadow the future; they give notice; they tell the Rebels that they are not to take part in Reconstruction; and they tell our friends and the friends of the Union that we mean to be wakeful with regard to their interests. Such will be their effect. They are in the nature of a declaration. At the beginning of the war there was a declaration, which has been often quoted in both Houses, with regard to the purposes of the war. Very often in times past declarations of policy were made in one House or the other, and sometimes by concurrent resolutions of the two Chambers. If the occasion requires,

the declaration ought to be made. In common times and under ordinary circumstances there would be no occasion for such a declaration, but at this moment there seems peculiar occasion; you must give notice; and the failure of our bill to meet the present exigency throws this responsibility upon us.

The next question is as to the character of the notice. It begins in its title by declaring that certain further guaranties are required in the Reconstruction of the Rebel States. Can any Senator doubt that such guaranties are required? I submit that on that head there can be no question. I am persuaded that my excellent friend from Oregon will not question that general statement.

Mr. Sumner then took up the several points of the resolutions in order and explained them. Coming to that declaring the necessity of a homestead for the freedman, he proceeded: —

I believe that all familiar with the processes of Reconstruction have felt that our work would be incomplete, unless in some way we secured to the freedman a piece of land. Only within a few days, gentlemen fresh from travel through these States have assured me, that, as they saw the condition of things there, nothing pressed upon their minds more than the necessity of such a provision. The more you reflect upon it, and the more you listen to evidence, the stronger will be your conclusion as to this necessity.

Do you ask as to the power of Congress? Again I say, you find it precisely where you found the power to confer universal suffrage. To give a homestead will be no more than to give a vote. You have done the one, and now you must do the other. We are told that to him that hath shall be given; and as you have

already given the ballot, you must go further, and give not only education, but the homestead. Nor can you hesitate for want of power. The time for hesitation has passed.

MR. FESSENDEN [of Maine]. I should like to ask my friend a question, with his permission.

MR. SUMNER. Certainly.

MR. FESSENDEN. The Senator put the granting of the ballot on the ground that without it the Government would not be republican in form, as I understood his argument.

MR. SUMNER. Yes.

MR. FESSENDEN. Now I should like to know if he puts the possession by every man of a piece of land on the same ground.

MR. SUMNER. I do not.

MR. FESSENDEN. The Senator assimilated the two, and said, that, having done the one, we must do the other. I supposed, perhaps, the same process of reasoning applied to both.

MR. SUMNER. No; the homestead stands on the necessity of the case, to complete the work of the ballot.

MR. GRIMES [of Iowa]. Have we not done that under the Homestead Law?

MR. SUMNER. The freedmen are not excluded from the Homestead Law; but I would provide them with a piece of land where they are.

MR. FESSENDEN. That is more than we do for white men.

MR. SUMNER. White men have never been in slavery; there is no emancipation and no enfranchisement of white men to be consummated. I put it to my friend, I ask his best judgment, can he see a way to complete and crown this great and glorious work without securing land? My friend before me [Mr. GRIMES] asks,

"How are we to get the land?" There are several ways. By a process of confiscation we should have had enough; and I have no doubt that the country would have been better, had the great landed estates of the South been divided and subdivided among the loyal colored population. That is the judgment of many Unionists at the South. I say nothing on that point; but clearly there are lands through the South belonging to the United States, or that have fallen to the United States through the failure to pay taxes. It has always seemed to me that in the exercise of the pardoning power it would have been easy for the President to require that the person who was to receive a pardon should allot a certain portion of his lands to his freedmen. That might have been annexed as a condition. A President properly inspired, and disposed to organize a true Reconstruction, could not have hesitated in such a requirement. That would have been a very simple process. I am aware that Congress cannot affect the pardoning power; but still I doubt not there is something that can be done by Congress. Where Congress has done so much, I am unwilling to believe it cannot do all that the emergency requires. Let us not shrink from the difficulties. With regard to the homestead there may be difficulties, but not on that account should we hesitate. We must assure peace and security to these people, and, to that end, consider candidly, gently, carefully, the proper requirements, and then fearlessly provide for them.

There is still another, which I have not named in these resolutions, though I have employed it in the careful and somewhat extended Reconstruction Bill which I have laid on the table of the Senate, and which some

time I may try to call up for discussion, — and that is, the substitution of the vote by ballot for the vote *viva voce*. Letters from Virginia, and also from other parts of the South, all plead for this change. They say, that, so long as the vote *viva voce* continues, it will be difficult for the true Union men to organize; they will be under check and control from the Rebels. I have a letter, received only this morning, from a Unionist, from which I will read a brief passage.

. . . . .

Now does my excellent friend from Oregon, who wishes to bury this effort in a committee, doubt the concluding resolution? Can he hesitate to say that every one of these requirements is in the nature of a guaranty, without which we shall not obtain that complete security for the future which our country has a right to expect? There they are. That the illegal governments must be vacated. Who can doubt that? That provisional governments must be constituted as temporary substitutes for the illegal governments. Who can doubt that? That the new governments must be founded on an unalterable basis of loyalty, and to that end no Rebels must be allowed to exert influence or agency in the formation of the new governments. Who can doubt that? Then, again, education: who can doubt? Certainly not my friend from Oregon: he will not doubt the importance of education as a corner-stone of Reconstruction. It is a golden moment. We have the power. Let us not fail to exercise it. Exercising it now, we can shape the destinies of that people for the future. There remains the homestead. I see the practical difficulties; but I do not despair. Let us apply ourselves to them, and I do not doubt that we can secure sub-

stantially to every head of a family among the freedmen a piece of land, and we may then go further, and, in the way of machinery, provide a vote by ballot instead of a vote *viva voce*.

Now I insist that all these are in the nature of guaranties of future peace, and we should not hesitate in doing all within our power to secure them. I hope, therefore, that Senators will act on these resolutions without reference to a committee. I see no occasion for a reference. There is one objection, at least, on the face: it will cause delay. Let these resolutions be adopted and go to the country, and you will find that the gratitude of the American people, and of all Union men at the South, will come up to Congress for your act.

Mr. Dixon, of Connecticut, deprecated the adoption of the resolutions. The bill recently passed "purported to be final. . . . . It provided certain terms, harsh and severe in the extreme, upon which the States formerly in rebellion should be restored to the Union." He then remarked: "These resolutions come from the right quarter. Whatever may be my opinion of his [Mr. SUMNER'S] political views, I will say for that Senator, that for the last two years he has been prophetic; what he has announced, what he has declared, what he has said must be law, has become law upon many subjects. . . . . Let us know what is coming; let us see the worst. . . . . While I was very glad to find — if I understood them correctly — that the Senator from Maine [Mr. FESSENDEN] and some other Senators about me did not coincide with the views of the Senator from Massachusetts, I could not forget that two years ago I heard a Senator on this floor say that upon another subject there was not a single Senator here who agreed with the Senator from Massachusetts; and yet upon that very subject I believe every Senator on the majority side of the Senate now, if not at heart concurring with him, acts and votes with him."

Mr. Sherman, of Ohio, opposed the resolutions. It seemed to him "not exactly fair or just or ingenuous to the Southern people to add new terms, or require of them additional guaranties, as conditions to the admission of representation."

Mr. Reverdy Johnson, of Maryland, voted for the recent bill because he thought he saw in opinions of Mr. Sumner, "and a few others who concur with him, that, if the measure then before the Senate was not adopted, harsher, much harsher, measures would in the end be exacted of the South."

Mr. Frelinghuysen, of New Jersey, thought the resolutions "unfair to Congress and unfair to the country."

Mr. Sumner said in reply: —

THE objects which I seek in Reconstruction are regarded in very different lights by myself and by Senators who have spoken. The Senator from New Jersey, the Senator from Maryland, and the Senator from Ohio all regard these requirements as in the nature of burdens or penalties. Education is a burden or penalty; a homestead is a burden or penalty. It is a new burden or penalty which I am seeking — so these distinguished Senators argue — to impose upon the South. Are they right, or am I right? Education can never be burden or penalty. Justice in the way of a homestead can never be burden or penalty. Each is a sacred duty which the nation owes to those who rightfully look to us for protection.

Now, at this moment, in the development of events, the people at the South rightfully look to us for protection. They rightfully look to us, that, in laying the foundation-stone of future security, we shall see that those things are done which will make the security real, and not merely nominal. And yet, when I ask that the security shall be real, and not merely nominal, I am encountered by the objection that I seek to impose new burdens, — that I am harsh. Sir, if I know my own heart, I would not impose a burden upon any human being. I would not impose a burden even upon those who have trespassed so much against the Repub-

lic. I do not seek their punishment. Never has one word fallen from my lips asking for their punishment, for any punishment of the South. All that I ask is the establishment of human rights on a permanent foundation. Is there any Senator who differs from me? I am sure that my friend from Ohio seeks the establishment of future security; but he will allow me to say, that to my mind he abandons it at the beginning, — he fails at the proper moment to require guaranties without which future security will be vain.

This is not the first time that the Senator from Ohio has set himself against fundamental propositions of Reconstruction. When, now more than four years ago, I had the honor of introducing into this Chamber a proposition declaring the jurisdiction of Congress over this whole question, and over the whole Rebel region, I was met by the Senator, who reminded me that I was alone, and did not hesitate to say that my position was not unlike that of Jefferson Davis.

Here Mr. Sumner sent to the desk the speech of Mr. Sherman, April 2, 1862, and the Secretary read what he said of Mr. Sumner's position.

I have not called attention to these remarks in any unkind spirit, for I have none for the Senator; I have no feeling but kindness and respect for him; but as I listened to him a few minutes ago, remonstrating against the position I now occupy, I was carried back to that early day when he remonstrated, if possible, more strenuously against the position I then occupied. I had the audacity then to assert the paramount power of Congress over the whole Rebel region. That was the sum and substance of my argument; and you have heard the answer of the Senator. And now, in the

lapse of time, the Senator has ranged himself by my side, voting for that measure of Reconstruction which is founded on the jurisdiction of Congress over the whole Rebel region.

As time passed, the subject assumed another character. It was with regard to the suffrage. A year ago I asserted on this floor that we must give the suffrage to all colored persons by Act of Congress and without Constitutional Amendment, founding myself on two grounds. One was the solemn guaranty in the Constitution of a republican form of government; and I undertook to show that any denial of rights on account of color was unrepublican to such extent that the government sanctioning it could not be considered in any just sense republican. I then went further, and insisted, that, from the necessity of the case, at the present moment, Congress must accord the suffrage to all persons at the South, without distinction of color. I argued that the suffrage of colored citizens was needed to counterbalance the suffrage of the Rebels.[1] One year has passed, and now, by Act of Congress, you have asserted the very power which the Senator from Ohio, and other distinguished Senators associated with him, most strenuously denied. That Senator and other Senators insisted that it could be only by Constitutional Amendment. I insisted that it could be under the existing text of the Constitution; nay, more, that from the necessity of the case it must be in this way. And in this way it has been done.

But, in doing it, you have unhappily failed to make proper provision for enforcing this essential security.

[1] Speech on "The Equal Rights of All," February 5, 6, 1866: *ante*, Vol. XIII. pp. 115, seqq.

You have provided no machinery, and you have left other things undone which ought to be done. And now, urging that these things should be done, I am encountered again by my friend from Ohio, whom I had encountered before on these other cardinal propositions; and he now, just as strenuously as before, insists that it is not within our power or province at this moment to make any additional requirements of the Rebel States. He is willing that the bill in certain particulars shall be amended. I do not know precisely to what extent he would go; but he will make no additional requirements, as he expresses it, in the nature of burdens. Sir, I make no additional requirements in the nature of burdens. I have already said, I impose no burdens upon any man; but I insist upon the protection of rights. And now, at this moment, as we are engaged in this great work of Reconstruction, I insist that the work shall be completely done. It will not be completely done, if you fail to supply any safeguards or precautions that can possibly be adopted.

A great orator has told us that he had but one lamp by which his feet were guided, and that was the lamp of experience[1] There is one transcendent experience, commanding, historic, which illumines this age. It is more than a lamp; it is sunshine. I mean the example afforded by the Emperor of Russia, when he set free twenty million serfs. Did he stop with their freedom? He went further, and provided for their education, and also that each should have a piece of land. And now, when I ask that my country, a republic, heir of all the ages, foremost in the tide of time, should do on this ques-

[1] Patrick Henry, Speech in the Virginia Convention, March 23, 1775: Wirt's Life of Henry (3d edit.), p. 120.

tion only what the Emperor of Russia has done, I am met by grave Senators with the reproach that I am imposing new burdens. It is no such thing. I am only asking new advantages for all in that distracted region, with new securities for my country, to the end that it may be safe, great, and glorious.

After remarks by Mr. Howard, of Michigan, the resolutions, on motion of Mr. Frelinghuysen, were laid on the table, — Yeas 36, Nays 10.

March 12th, the resolutions were again considered, when Mr. Morton, of Indiana, spoke in favor of education, and Mr. Howe, of Wisconsin, sustained the resolutions generally.

July 3d, Mr. Sumner made another attempt to have them considered, speaking specially upon the importance of a homestead for freedmen.

GENEROSITY FOR EDUCATION.

SPEECH IN THE SENATE, ON A JOINT RESOLUTION GIVING THE THANKS OF CONGRESS TO GEORGE PEABODY, MARCH 8, 1867.

MARCH 5th, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in the following joint resolution, which was read twice and ordered to be printed.

"JOINT RESOLUTION presenting the thanks of Congress to George Peabody.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the thanks of Congress be, and they hereby are, presented to George Peabody, of Massachusetts, for his great and peculiar beneficence in giving a large sum of money, amounting to two million dollars, for the promotion of education in the more destitute portions of the Southern and Southwestern States, the benefits of which, according to his direction, are to be distributed among the entire population, without any distinction, except what may be found in needs or opportunities of usefulness.

"SEC. 2. *And be it further enacted*, That it shall be the duty of the President to cause a gold medal to be struck, with suitable devices and inscriptions, which, together with a copy of this resolution, shall be presented to Mr. Peabody in the name of the people of the United States."

March 8th, on motion of Mr. Sumner, the joint resolution was taken up for consideration, when the latter said: —

MR. PRESIDENT, — I hope sincerely that there can be no question on this resolution. It expresses the thanks of Congress for an act great in itself, and also great as an example.

I recall no instance in history where a private person during life has bestowed so large a sum in charity.

Few after death have done so much. The bequest of Smithson, which Congress accepted with honor, and made the foundation of the institution bearing his name and receiving our annual care, was much less than the donation of Mr. Peabody for purposes of education in the South and Southwestern States, to be distributed among the whole population, without any distinction other than needs or opportunities of usefulness to them.

I hail this benefaction as of especial value now: first, as a contribution to education, which is a sacred cause never to be forgotten in a republic; secondly, as a charity to a distressed part of our country which needs the help of education; and, thirdly, as an endowment for the equal benefit of all, without distinction of caste. As it is much in itself, so I cannot but think it will be most fruitful as an example. Individuals and communities will be moved to do more in the same direction, and impartial education may be added to recent triumphs.

I am not led to consider the difference between the widow's mite and the rich man's endowment, except to remark, that, when a charity is so large as to become historic, it is necessarily taken out of the category of common life. Standing apart by itself, it challenges attention and fills the mind, receiving homage and gratitude. Such, I am sure, has been the prevailing sentiment of our country toward Mr. Peabody. In voting this resolution, Congress will only give expression to the popular voice.

I should be sorry to have it understood that the thanks of Congress can be won only in war. Peace also has victories deserving honor. A public benefac-

tor is a conqueror in the perpetual conflict with evil. He, too, meets the enemy face to face. Let him also have the reward of victory.

Already in England our benefactor has signalized himself by a generous endowment of the poor. The sum he gave was large, but not so large as he has given for education in our country. The sentiments of the British people found expression through the Queen, who honored him with a valuable present, her own portrait, and an autograph letter declaring her grateful sense of his beneficence. Kindred sentiments may justly find expression through Congress, which is empowered to write the autograph of the American people.

If it be said that such a vote is without precedent, I reply that this is a mistake. You voted thanks to Mr. Vanderbilt for the present of a steamer, and to Mr. Field for generous enterprise in establishing the telegraphic cable between the two continents. But even if there were no precedent, then, do I say, make a precedent. Your vote will be less unprecedented than his generosity.

At this moment, when we are engaged in the work of Reconstruction, this endowment for education in the Southern and Southwestern States is most timely. Education is the foundation-stone of that Republican Government we seek to establish. On this account, also, I would honor the benefactor.

I have not asked a reference to a committee, because it seemed that the resolution was of such a character that the Senate would be glad to act upon it directly. The thanks we offer will be of more value, if promptly offered.

The joint resolution was adopted by the Senate, — Yeas 36, Nays 2. March 13th it passed the House unanimously, was approved by the President, and became a law.[1]

[1] Statutes at Large, Vol. XV. p. 20.

RECONSTRUCTION AGAIN.

THE BALLOT AND PUBLIC SCHOOLS OPEN TO ALL.

SPEECHES IN THE SENATE, ON THE SUPPLEMENTARY RECONSTRUCTION BILL, MARCH 15 AND 16, 1867.

To counteract the malign influence of President Johnson, and to protect the public interest jeopardized by his conduct, Congress provided for a session to commence March 4, 1867, immediately after the expiration of its predecessor. The new Congress was signalized by a second Reconstruction Bill, "supplementary to an Act to provide for the more efficient government of the Rebel States," passed March 2, 1867, which was promptly introduced into the House of Representatives and passed.

As early as March 13th, the House bill was reported to the Senate from the Judiciary Committee, with a substitute, and for several days thereafter it was considered. Among the various amendments moved was one by Mr. Drake, of Missouri, providing that the registered electors should declare, by their votes of "Convention" or "No Convention," whether a convention to frame a constitution should be held, which was rejected, — Yeas 17, Nays 27.

March 15th, Mr. Fessenden, of Maine, moved an amendment, that the commanding general should furnish a copy of the registration to the Provisional Government of the State; and whenever thereafter the Provisional Government should by legal enactment provide that a convention should be called, the commanding general should then direct an election of delegates. In the debate on this proposition, Mr. Sumner said: —

MR. PRESIDENT, — In voting on the proposition of the Senator from Maine, I ask myself one question: How would the Union men of the South vote, if they had the privilege? They are unrepresented. We here ought to be the representatives of the unrepresented. How, then, would the Union men of the South vote on the proposition of the Senator? I cannot doubt, that, with one voice, they would vote No. They would not trust their fortunes in any way to the existing governments of the Rebel States. Those governments have been set up in spite of the Union men, and during their short-lived existence they have trampled upon Union men and upon their rights. That region might be described as bleeding at every pore, and much through the action of the existing governments, owing their origin to the President. So long as they continue, their influence must be pernicious. I hear, then, the voice of every Union man from every one of the Rebel States coming up to this Chamber and entreating us to refuse all trust, all power, to these Legislatures. I listen to their voice, and shall vote accordingly.

But I feel, nevertheless, that something ought to be done in the direction of the proposition of the Senator from Maine. I listened to his remarks, and in their spirit I entirely concur; but it seems to me that his argument carried us naturally to the proposition of the Senator from Missouri. To my mind, that proposition is founded in good sense, in prudence, in a just economy of political forces. It begins at the right end. It begins with the people. The Senator proposes that the new governments, when constituted, shall stand on that

broad base. The proposition of the Committee stands the pyramid on its apex. I am therefore for the proposition of the Senator from Missouri, and I hope that at the proper time he will renew it, and give us another opportunity of recording our votes in its favor.

The amendment of Mr. Fessenden was rejected, — Yeas 14, Nays 33.

March 16th, Mr. Sumner moved to insert "all" before "electors," and to substitute "registered" for "qualified," so as to read, "ratified by a majority of the votes of all the electors registered as herein specified." After debate, the amendment was rejected, — Yeas 19, Nays 25.

Mr. Drake subsequently renewed his rejected amendment, with a modification that the result should be determined by a majority of those voting, and it was adopted. Mr. Conkling, of New York, moved to reconsider the last vote, so as to provide that the result should be determined by a majority of all the votes registered, instead of a majority of all the votes given. On this motion, Mr. Sumner remarked: —

I SAID nothing, when the question was up before; but I cannot allow the vote to be taken now without expressing in one word the ground on which I shall place my vote.

We have just come out from the fires of a terrible Rebellion, and our special purpose now is to set up safeguards against the recurrence of any such calamity, and also for the establishment of peace and tranquillity throughout that whole region. There is no Senator within the sound of my voice who is not anxious to see that great end accomplished. How shall it be done? By founding government on a majority or on a minority? If these were common times, then I should listen to the argument of the Senator from Missouri [Mr. DRAKE], and also of the Senator from Indiana [Mr. MORTON], to the effect that the government might be founded on a majority of those who actually vote, al-

though really a minority of the population; but at this moment, when we are seeking to recover ourselves from the Rebellion, and to guard against it in future, I cannot expose the country to any such hazard. I would take the precaution to found government solidly, firmly, on a majority, — not merely a majority of those who vote, but a majority of all registered voters. Then will the government be rooted and anchored in principle, so that it cannot be brushed aside. How was it when the Rebellion began? Everything was by minorities. A minority in every State carried it into rebellion. I would have the new government planted firmly on a majority, so that it can never again be disturbed. I can see no real certainty of security for the future without this safeguard.

The motion to reconsider prevailed, — Yeas 21, Nays 18; but the amendment of Mr. Conkling was rejected, — Yeas 17, Nays 22, — when Mr. Drake's amendment was again adopted. Then, on motion of Mr. Edmunds, of Vermont, it was provided "that such convention shall not be held, unless a majority of all such registered voters shall have voted on the question of holding such convention," — Yeas 21, Nays 18.

Mr. Drake then moved to require in the new constitutions, "that, at all elections by the people for State, county, or municipal officers, the electors shall vote by ballot," and this was adopted, — Yeas 22, Nays 19. Mr. Trumbull, of Illinois, at once moved to reconsider the last vote, and was sustained by Mr. Williams, of Oregon, Mr. Stewart, of Nevada, and Mr. Morton, of Indiana. Mr. Sumner sustained the amendment.

Mr. President, — The argument of the Senator from Oregon proceeds on the idea that this is a small question. He belittles it, and then puts it aside. He treats it as of form only, and then scorns it. Sir, it may be a question of form, but it is a form vital to the substance, vital to that very suffrage which the Senator

undertakes to vindicate. Does the Senator know that at this moment the special question which tries British reformers is the ballot? To that our heroic friend, John Bright, has dedicated his life. He seeks to give the people of England vote by ballot. He constantly looks to our country for the authority of a great example. And now the Senator is willing to overturn that example. I will not, by my vote, consent to any such thing. I would reinforce the liberal cause, not only in my own country, but everywhere throughout the world; and that cause, I assure you, is staked in part on this very question.

No, Sir, — it is not a small question. It cannot be treated as trivial. It is a great question. Call it, if you please, a question of form; but it is so closely associated with substance that it becomes substance. I hope the Senate will not recede from the generous and patriotic vote it has already given. I trust it will stand firm. Ask any student of republican institutions what is one of their admitted triumphs, and he will name the vote by ballot. There can be no doubt about it. Do not dishonor the ballot, but see that it is required in the constitutions of these Rebel States. The Senator from Oregon raises no question of power. Congress has the power. That is enough. You must exercise it.

Mr. Drake then modified his amendment, so that, instead of "all elections by the people for State, county, or municipal officers," it should read, "all elections by the people," and it was rejected, — Yeas 17, Nays 22. Mr. Sumner then remarked: —

THE Senate has been occupied for two days in the discussion of questions, many merely of form. I propose now to call attention to one of substance, with which, as I submit, the best interests of the Rebel

States and of the Republic at large are connected. I send to the Chair an amendment, to come in at the end of section four.

The Secretary read the proposed amendment, as follows: —

"*Provided*, That the constitution shall require the Legislature to establish and sustain a system of public schools open to all, without distinction of race or color."

Mr. Sumner proceeded to say: —

Mr. President, — I shall vote for this bill, — not because it is what I desire, but because it is all that Congress is disposed to enact at the present time. I do not like to play the part of Cassandra, — but I cannot forbear declaring my conviction that we shall regret hereafter that we have not done more. I am against procrastination. But I am also against precipitation. I am willing to make haste; but, following the ancient injunction, I would make haste slowly: in other words, I would make haste so that our work may be well done and the Republic shall not suffer. Especially would I guard carefully all those who justly look to us for protection, and I would see that the new governments are founded in correct principles. You have the power. Do not forget that duties are in proportion to powers.

I speak frankly. Let me, then, confess my regret that Congress chooses to employ the military power for purposes of Reconstruction. The army is for protection. This is its true function. When it undertakes to govern or to institute government, it does what belongs to the civil power. Clearly it is according to the genius of republican institutions that the military should be subordinate to the civil. *Cedant arma togæ*

is an approved maxim, not to be disregarded with impunity. Even now, a fresh debate in the British Parliament testifies to this principle. Only a fortnight ago, the Royal Duke of Cambridge, cousin to the Queen, and commander of the forces, used these words: —

"The practice of calling out troops to quell civil disturbances is exceedingly objectionable; *but it must not be forgotten that the initiative in such cases is always taken by the civil authorities themselves.*" [1]

This declaration, though confined to a particular case, embodies an important rule of conduct, which to my mind is of special application now.

By the system you have adopted, the civil is subordinate to the military, and the civilian yields to the soldier. You accord to the army an "initiative" which I would assure to the civil power. I regret this. I am unwilling that Reconstruction should have a military "initiative." I would not see new States born of the bayonet. Leaving to the army its proper duties of protection, I would intrust Reconstruction to provisional governments, civil in character and organized by Congress. You have already pronounced the existing governments illegal. Logically you should proceed to supply their places by other governments, while the military is in the nature of police, until permanent governments are organized, republican in form and loyal in character. During this transition period, permanent governments might be matured on safe foundations and the people educated to a better order of things. As the twig is bent the tree inclines: you may now bend the twig. These States are like a potter's vessel: you may mould them to be vessels of honor or of dishonor.

[1] Speech in the House of Lords, on Troops at Elections, March 1, 1867: Times, March 2.

From the beginning I have maintained these principles. Again and again I have expressed them in the Senate and elsewhere. At the last session I insisted upon the Louisiana Bill in preference to the Military Bill. In the earliest moments of the present session I introduced a bill of my own, prepared with the best care I could bestow, in which was embodied what seemed to me a proper and practical system of Reconstruction, with provisional governments to superintend the work and pave the way for permanent governments. This measure, which I now hold in my hand, is entitled "A Bill to guaranty a republican form of government in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Texas, and to provide for the restoration of these States to practical relations with the Union." Its character is seen in its title. It is not a military bill, or a bill to authorize Reconstruction by military power; but it is a bill essentially civil from beginning to end.

The principles on which this bill proceeds appear in its preamble, which, with the permission of the Senate, I will read.

"Whereas in the years 1860 and 1861 the inhabitants of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Texas changed their respective constitutions so as to make them repugnant to the Constitution of the United States;

"And whereas the inhabitants of these States made war upon the United States, and after many battles finally surrendered, under the rules and usages of war;

"And whereas the inhabitants of these States, at the time of their surrender, were without legal State governments, and, as a rebel population, were without authority to form legal

State governments, or to exercise any other political functions belonging to loyal citizens, and they must so continue until relieved of such disabilities by the law-making power of the United States;

"And whereas it belongs to Congress, in the discharge of its duties under the Constitution, to secure to each of these States a republican form of government, and to provide for the restoration of each to practical relations with the Union;

"And whereas, until these things are done, it is important that provisional governments should be established in these States, with legal power to protect good citizens in the enjoyment of their rights, and to watch over the formation of State governments, so that the same shall be truly loyal and republican: Therefore" ——

With this preamble, exhibiting precisely the necessity and reasons of Reconstruction, the bill begins by declaring that the provisional governments shall convene on the fourth Monday after its passage, and shall continue until superseded by permanent governments, created by the people of these States respectively, and recognized by Congress as loyal and republican. It then establishes an executive power in each State, vested in a governor appointed by the President by and with the advice and consent of the Senate, and not to be removed except by such advice and consent. The legislative power is vested in the governor and in thirteen citizens, called a legislative council, appointed by and with the advice and consent of the Senate, and not to be removed except by such advice and consent. All these, being officers of the United States, must take the test oath prescribed already by Act of Congress; and the bill adds a further oath to maintain a republican form of government, as follows: —

"I do hereby swear (or affirm) that I will at all times use my best endeavors to maintain a republican form of government in the State of which I am an inhabitant and in the Union of the United States; that I will recognize the indissoluble unity of the Republic, and will discountenance and resist any endeavor to break away or secede from the Union; that I will give my influence and vote to strengthen and sustain the National credit; that I will discountenance and resist every attempt, directly or indirectly, to repudiate or postpone, in any part or in any way, the debt which was contracted by the United States in subduing the late Rebellion, or the obligations assumed to the Union soldiers; that I will discountenance and resist every attempt to induce the United States or any State to assume or pay any debt or obligation incurred in aid of rebellion against the United States, or any claim for the loss or emancipation of any slave; that I will discountenance and resist all laws making any distinction of race or color; that I will give my support to education and the diffusion of knowledge by public schools open to all; and that in all ways I will strive to maintain a State government completely loyal to the Union, where all men shall enjoy equal protection and equal rights."

I know well the whole history of oaths, and how often they are the occasion of perjury by the wholesale. But I cannot resist the conclusion that at this moment, when we are taking securities for the future, we ought to seize the opportunity of impressing upon the people fundamental principles on which alone our Government can stand. You may exclude Rebels; but their children, who are not excluded, have inherited the Rebel spirit. The schools and colleges of the South have been nurseries of Rebellion. I would exact from all seeking the public service, or even the elective franchise, a pledge to support a republican government;

and to make this pledge perfectly clear, so that all may understand its extent, I would enumerate the points which are essential. If a citizen cannot give this pledge, he ought to have no part in Reconstruction. He must stand aside.

From this requirement the bill proceeds to enumerate certain classes excluded from office and also from the elective franchise. This is less stringent than what is known as the Louisiana Bill. It does not exclude citizens who have not held office, unless where they have left their homes within the jurisdiction of the United States and passed within the Rebel lines to give aid and comfort to the Rebellion, — or where they have voluntarily contributed to any loan or securities for the benefit of any of the Rebel States or the central government thereof, — or where, as authors, publishers, editors, or as speakers or preachers, they have encouraged the secession of any State or the waging of war against the United States.

The bill then provides for executive and judicial officers, and for their salaries, under the provisional government; also for grand and petit juries; also for a militia. But all officers, jurors, and militiamen must take the oath that they are not in the excluded classes, and also the oath to support a republican form of government.

The bill then annuls existing legislatures; also the acts of conventions which framed ordinances of secession, and the acts of legislatures since, subject to certain conditions; and it provides that the judgments and decrees of court, which have not been voluntarily executed, and which have been rendered subsequently to the date of the ordinance of secession, shall be subject

to appeal to the highest court in the State, organized after its restoration to the Union. Safeguards like these seem essential to the protection of the citizen.

The bill does what it can for education by requiring —

"That it shall be the duty of the governor and legislative council in each of these States to establish public schools, which shall be open to all, without distinction of race or color, to the end, that, where suffrage is universal, education may be universal also, and the new governments find support in the intelligence of the people."

Such are the provisional governments.

The bill then provides for permanent governments republican and truly loyal. For this purpose the governor must make a registration of male citizens twenty-one years of age, of whatever color, race, or former condition, and, on the completion of this register, invite all to take the oath that they are not in the excluded classes, and also the oath to maintain a republican form of government; and if a majority of the persons duly registered shall take these oaths, then he is to order an election for members of a convention to frame a State constitution. Nobody can vote or sit as a member of the convention except those who have taken the two oaths; but no person can be disqualified on account of race or color. All qualified as voters are eligible as members of the convention.

The constitution must contain in substance certain fundamental conditions, never to be changed without consent of Congress: —

First, That the Union is perpetual;

Secondly, That Slavery is abolished;

Thirdly, That there shall be no denial of the elective franchise, or of any other right, on account of race or color, but all persons shall be equal before the law;

Fourthly, That the National debt, including pensions and bounties to Union soldiers, shall never be repudiated or postponed;

Fifthly, That the Rebel debt, whether contracted by a Rebel State or by the central government, shall never be recognized or paid; nor shall any claim for the loss or emancipation of any slave, or any pension or bounty for service in the Rebellion, be recognized or paid;

Sixthly, That public schools shall be established, open to all without distinction of race or color;

Seventhly, That all persons excluded from office under this Act shall be excluded by the constitution, until relieved from disability by Act of Congress.

The constitution must be ratified by the people and submitted to Congress. If Congress shall approve it as republican in form, and shall be satisfied that the people of the State are loyal and well-disposed to the Union, the State shall be restored to its former relations and the provisional government shall cease.

Such is the bill which I should be glad to press upon your attention, creating provisional governments and securing permanent governments. It is not a military bill; and on this account, in spirit and form, if not in substance, it might be preferred to that which you have begun to sanction. Besides, it contains abundant safeguards. I regret much that something like this cannot be adopted. It is with difficulty that I renounce a desire long cherished to see Reconstruction under the supervision of Congress, according to the forms of civil order, without the intervention of military power. I am

sure that such a bill would be agreeable to the Unionists of the Rebel States; and this with me is a rule of conduct which I am unwilling to disregard. They are without representation in Congress. Let us be their representatives. I hear their voices gathered into one prayer. I cannot refuse to listen.

If this bill cannot be adopted, then I ask that you shall take at least one of its provisions. Require free schools as an essential condition of Reconstruction. But I am met by the objection, that we are already concluded by the Military Bill adopted a few days ago, so that we cannot establish any new conditions. This is a mistake. There is no word in the Military Bill which can have this interpretation. Besides, the bill is only a few days old; so that, whatever its character, nothing is as yet fixed under its provisions. It contains no compact, no promise, no vested right, nothing which may not be changed, if the public interests require. There are some who seem to insist that it is a strait-jacket. On the contrary, this very bill asserts in positive terms "the paramount authority of the United States." Surely this is enough. In the exercise of this authority, it is your duty to provide all possible safeguards. To adopt a familiar illustration, these States must be "bound to keep the peace." Nothing is more common after an assault and battery. But this can be only by good laws, by careful provisions, by wise economies, and securities of all kinds.

Sometimes it is argued that it is not permissible to make certain requirements in the new constitutions, although, when the constitutions are presented to Congress for approval, we may object to them for the want

of these very things. Thus it is said that we may not require educational provisions, but that we may object to the constitutions, when formed, if they fail to have this safeguard. This argument forgets the paramount power of Congress over the Rebel States, which you have already exercised in ordaining universal suffrage. Who can doubt, that, with equal reason, you may ordain universal education also? And permit me to say that one is the complement of the other. But I do not stop with assertion of the power. The argument that we are to wait until the constitution is submitted for approval is not frank. I wish to be plain and explicit. We have the power, assured by reason and precedent. Exercise it. Seize the present moment. Grasp the precious privilege. There are some who act on the principle of doing as little as possible. I would do as much as possible, believing that all we do in the nature of safeguard must redound to the good of all and to the national fame. It is in this spirit that I now move to require a system of free schools, open to all without distinction of caste. For this great safeguard I ask your votes.

You have prescribed universal suffrage. Prescribe now universal education. The power of Congress is the same in one case as in the other. And you are under an equal necessity to employ it. Electors by the hundred thousand will exercise the franchise for the first time, without delay or preparation. They should be educated promptly. Without education your beneficent legislation may be a failure. The gift you bestow will be perilous. I was unwilling to make education the condition of suffrage; but I ask that it shall accompany and sustain suffrage.

Mr. President, I plead now for Education. Nothing more beautiful or more precious. Education decorates life, while it increases all our powers. It is the charm of society, the solace of solitude, and the multiple of every faculty. It adds incalculably to the capacity of the individual and to the resources of the community. Careful inquiry establishes what reason declares, that labor is productive in proportion to its education. There is no art it does not advance. There is no form of enterprise it does not encourage and quicken. It brings victory, and is itself the greatest of victories.

In a republic education is indispensable. A republic without education is like the creature of imagination, a human being without a soul, living and moving blindly, with no just sense of the present or the future. It is a monster. Such have been the Rebel States, — for years nothing less than political monsters. But such they must be no longer.

It is not too much to say, that, had these States been more enlightened, they would never have rebelled. The barbarism of Slavery would have shrunk into insignificance, without sufficient force to break forth in blood. From the returns before the Rebellion[1] we learn that in the Slave States there were not less than 493,026 native white persons over twenty years of age who could not read and write, — while in the Free States, with double the native white population, there were but 248,725 native whites over twenty years of age thus blighted by ignorance. In the Slave States the proportion was 1 in 5; in the Free States it was 1 in 22. The number in Free Massachusetts, with an adult native white population of 470,375, was 1,055, or 1 in 446; the number in

[1] See "Barbarism of Slavery," *ante*, Vol. VI. p. 157.

Slave South Carolina, with an adult native white population of only 120,136, was 15,580, or 1 in 8. The number in Free Connecticut was 1 in 256, in Slave Virginia 1 in 5; in Free New Hampshire 1 in 192, and in Slave North Carolina 1 in 3. In this prevailing ignorance we may trace the Rebellion. A population that could not read and write naturally failed to comprehend and appreciate a republican government.

This contrast between the Rebel States and the Loyal States appeared early. It was conspicuous in two Colonies, each of which exercised a peculiar influence. Massachusetts began her existence with a system of free schools. The preamble of her venerable statute deserves immortality. "That learning may not be buried in the grave of our fathers," her founders enacted that every township of fifty householders should maintain a school for reading and writing, and every town of a hundred householders a school to fit youths for the University.[1] This statute was copied in other Colonies. It has spread far, like a benediction. At the same time Virginia set herself openly against free schools. Her Governor, Sir William Berkeley, in 1671, in a reply to the Lords Commissioners of Plantations on the condition of the Colony, made this painful record: "I thank God *there are no free schools*, nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them. . . . . God keep us from both!"[2] Thus spoke Massachusetts, and thus spoke Virginia, in that ancient day. The conflict of

[1] Records of the Governor and Company of the Massachusetts Bay, November 11, 1647, Vol. II. p. 203.

[2] Hening, Statutes at Large of Virginia, Vol. II. p. 517.

ideas had already begun. Can you hesitate to adopt the statute so well justified by time? It began in an infant colony. Let it be the law of a mighty republic.

The papers of the day mention an incident, showing how the original spirit of the Virginia Governor still animates these States. A motion to print two hundred copies of the Report of the State Superintendent of Public Education was promptly voted down in the Senate of Louisiana, while a Senator, in open speech, "denounced the public education scheme as an unmitigated oppression, an electioneering device, an imposition, which he intended to bring in a bill to abolish, if they were allowed to go on legislating." With such brutality is this beautiful cause now encountered. It is as if a savage rudely drove an angel from his tent.

Be taught by this example, and do not hesitate, I entreat you. Remember how much is now in issue. You are to fix the securities of the future, and especially to see that a republican government is guarantied in all the Rebel States. I call them "Rebel," for such they are in spirit still, and such is their designation in your recent statute. But I ask nothing in vengeance or unkindness. All that I propose is for their good, with which is intertwined the good of all. I would not impose any new penalty or bear hard upon an erring people. Oh, no! I simply ask a new safeguard for the future, that these States, through which so much trouble has come, may be a strength and a blessing to our common country, with prosperity and happiness everywhere within their borders. I would not impose any new burden; but I seek a new triumph for civilization. For a military occupation bristling with bayonets I would substitute the smile of peace. But this

cannot be without Education. As the soldier disappears, his place must be supplied by the schoolmaster. The muster-roll will be exchanged for the school-register, and our headquarters will be a school-house.

Do not forget the grandeur of the work in which you are engaged. You are forming States. Such a work cannot be done hastily or carelessly. The time you give will be saved to the country hereafter a thousand-fold. The time you begrudge will rise in judgment against you. It is a law of Nature, that, just in proportion as the being produced is higher in the scale and more complete in function, all the processes are more complex and extended. The mature liberty we seek cannot have the easy birth of feebler types. As man, endowed with reason and looking to the heavens, is above the quadruped that walks, above the bird that flies, above the fish that swims, and above the worm that crawls, so should these new governments, republican in form and loyal in soul, created by your care, be above those whose places they take. The Old must give way to the New, and the New must be worthy of a Republic, which, ransomed from Slavery, has become an example to mankind. Farewell to the Old! All hail to the New!

Mr. Frelinghuysen, of New Jersey, Mr. Stewart, of Nevada, and Mr. Conness, of California, joined in criticism of Mr. Sumner's opposition to the employment of the military arm in Reconstruction, protesting particularly against the declaration that States are "about to be born of the bayonet." To the proposed requirement of a system of free schools in the Rebel States Mr. Frelinghuysen objected: "For us to undertake now to add new conditions to the Reconstruction measure which the Thirty-Ninth Congress adopted I hold to be bad faith. . . . . That is not the way to do business. . . . . Let this nation keep its faith. I hope, Mr. President, that the amendment will not be adopted." Mr. Patterson, of New Hampshire, would "be glad to have such a requi-

sition laid on all the States of the Union, if it were not unconstitutional. But he wished to ask him [Mr. SUMNER] this question: Does he think it possible to establish a system of common schools in these Southern States corresponding to the common-school system of New England, unless he first confiscates the large estates and divides them into small homesteads, so that there may be small landholders who shall support these schools by the taxation which is laid upon them?"

MR. SUMNER. I do.
MR. PATTERSON. You think it is possible?
MR. SUMNER. I do, certainly, — most clearly.

Mr. Morton said: "The proposition is fundamental in its character; its importance cannot be overestimated; and I hope that it will be placed as a condition, upon complying with which they shall be permitted to return." Mr. Cole, of California, declared himself "warmly in favor of the amendment." Mr. Hendricks, of Indiana, and Mr. Buckalew, of Pennsylvania, both Democrats, spoke against it. The latter thought Mr. Sumner "not open to criticism for the sentiments which he has expressed upon this occasion, nor for the position which he has assumed." In a humorous vein, he said: "The propositions which the Senator from Massachusetts makes one year, and which are criticized by his colleagues as extreme, inappropriate, and untimely, are precisely the propositions which those colleagues support with greater zeal and vehemence, if possible, than he, the year following. In short, Sir, we can foresee at one session of Congress the character of the propositions and of the arguments with which we are to be favored at the next in this Chamber, by looking to the pioneer man, who goes forward in advance, his banner thrown out, his cause announced, the means by which it shall be carried on and the objects in view proclaimed with force and frankness."

Mr. Sumner replied: —

MR. PRESIDENT, — The question of power, I take it, must be settled in this Chamber. You have already most solemnly voted to require in every new constitution suffrage for all, without distinction of race or color or previous condition. But the greater contains the less. If you can do that, you can do everything. If you can require that Magna Charta of human rights, you can require what is smaller. It is already fixed

in your statutes, enrolled in your archives, that Congress has this great power. I do not say whether it has this power over other States; that is not the question; but it has the power over the Rebel States. That power is derived from several sources, — first, from the necessity of the case, because the State governments there are illegal, and the whole region has passed, as in the case of Territories, under the jurisdiction of Congress: no legal government exists there, except what Congress supplies. There is another source in the military power now established over that region; then, again, in that great clause of the National Constitution by which you are required to guaranty to every State a republican form of government. Here is enough. Out of these three sources, these three overflowing fountains, springs ample authority. You have exercised it by prescribing in their constitutions Suffrage for all. I ask you to go one step further, and to prescribe Education for all.

I am met here by personal objections; I am asked why I have not brought this forward before. Sir, I have brought it forward in season and out of season. I have on the table before me a speech of mine in 1865, where, in laying down the great essential guaranties, I declared them as follows: First, the unity of the Republic; secondly, Enfranchisement; thirdly, the guaranty of the National debt; fourthly, the repudiation of the Rebel debt; fifthly, Equal Suffrage; and, sixthly, Education of the people.[1] Therefore from the beginning I have asked this guaranty, believing, as I do most clearly, that under the National Constitution

[1] Speech entitled "The National Security and the National Faith": *ante*, Vol. XII. pp. 325, seqq.

you may demand it. If you may demand it, if you have the power, then do I insist it is your duty so to do. Duties are in proportion to powers. These great powers are not merely for display or idleness, but for employment, to the end that the Republic may be advanced and fortified.

Then I have been reminded very earnestly by Senators that I have used strong language in saying that these governments will be open to the imputation of being born of the bayonet. This is not the first time I have used that language in this Chamber. From the beginning I have protested against Reconstruction by military power. Again and again I have asserted that it is contrary to the genius of republican institutions, and to a just economy of political forces. I have not been hearkened to. Others have pressed the intervention of military power; and now, as I am about to record my vote in favor of the pending proposition, I cannot but express my sincere and unfeigned regret that Congress did not see its way to a generous measure of Reconstruction purely civil in character, having no element of military power. Such you had before you at the last session in the Louisiana Bill, which I sought to press day by day; and when, at the last moment, the Military Bill was passed, I, from my place here, declared that I should deem it my duty at the earliest possible moment in this session to press the Louisiana Bill, or some kindred measure not military in character.

I was early tutored in the principles of Jefferson. I cannot forget his Inaugural Address, where he lays down among the cardinal principles, or what he calls "the essential principles of our Government," and con-

sequently those which ought to shape its administration, "The supremacy of the civil over the military authority." Imbued with this principle, I hoped that Congress would see the way to establish at once civil governments in all those States, and not subject them to military power, except so far as needed for purposes of protection. This is the true object of the army. It is to protect the country, — not to make constitutions, or to superintend the making of constitutions. At least, so I have read the history of republican institutions, and such are the aspirations that I presume to express for my country.

The vote on Mr. Sumner's proposition stood, Yeas 20, Nays 20, being a tie, so that the amendment was lost. Any one Senator changing from the negative would have carried it.

The bill passed the Senate, — Yeas 38, Nays 2. On the amendments of the Senate there was a difference between the two Houses, which ended in a committee of conference, whose report was concurred in without a division.

March 23d, the bill was vetoed by the President. On the same day it was passed again by the House, — Yeas 114, Nays 25, — and by the Senate, — Yeas 40, Nays 7, — being more than two thirds; so that it became a law, notwithstanding the objections of the President.[1]

[1] Statutes at Large, Vol. XV. pp. 2–5.

PROHIBITION OF DIPLOMATIC UNIFORM.

Speech in the Senate, on a Joint Resolution concerning the Uniform of Persons in the Diplomatic Service of the United States, March 20, 1867.

March 20th, Mr. Sumner, from the Committee on Foreign Relations, reported the following joint resolution: —

"*Resolved, &c.*, That all persons in the diplomatic service of the United States are prohibited from wearing any uniform or official costume not previously authorized by Congress."

He then stated that it was reported from the Committee unanimously, and that perhaps the Senate would be willing to consider it at once. The resolution was proceeded with by unanimous consent, when Mr. Sherman, of Ohio, remarked: "I do not see what right we have to prevent a minister abroad from wearing the uniform of our army, if he chooses." Mr. Sumner replied: —

THE Senator is aware that a habit exists among our ministers in Europe of wearing uniforms of other countries in the nature of court costumes or dresses; and this is often required before they are presented. The Committee on Foreign Relations, after careful consideration, have unanimously come to the conclusion that it is expedient to prohibit any such uniform or official costume, unless sanctioned previously by Act of Congress. It seems clear that our ministers abroad should not be required by any foreign government to wear a uniform, costume, or dress unknown to our own laws. This is very simple, and not unreasonable.

This question is perhaps more important than it appears. On its face it is of form only, or rather of dress, proper for the learned in Carlyle's "Sartor Resartus." But I am not sure that it does not concern the character of the Republic. Shall our ministers abroad be required by any foreign government to assume a uniform unknown to our laws? Ministers of other countries appear at foreign courts in the dress they would wear before the sovereign at home. What is good enough for the sovereign at home is, I understand, good enough for other sovereigns. And surely the dress in which one of our ministers would appear before the President of the United States ought to be sufficient anywhere. Its simplicity is to my mind no argument against it.

It is sometimes said, gravely enough, that, if our ministers appear in the simple dress of a citizen, according to the requirement of Mr. Marcy's famous circular, they may be mistaken for "upper servants." If such be the case, they will have little of the stamp of fitness. I am not troubled on this head. Their simplicity would be a distinction, and it would be typical of the republican government they represent. Amidst the brilliant dresses and fantastic uniforms of European courts a simple dress would be most suggestive. A British minister appearing at the Congress of Vienna in simple black, with a single star on his breast, so contrasted with the bedizened crowd about him as to awaken the admiration of an illustrious prince, who exclaimed, "How distinguished!"

This is an old subject, which I trust may be disposed of at last. Mr. Marcy enjoined simplicity in the official dress of our foreign representatives, and dwelt with pride on the well-known example of Benjamin Franklin. But

his instructions were not sufficiently explicit, and they were allowed to die out. Some appeared in simple black, and were not mistaken for "upper servants." But gold lace at last carried the day, and our representatives now appear in a costume peculiar to European courts. A simple prohibition by Congress will put an end to this petty complication, and make it easy for them to follow abroad the simple ways to which they have been accustomed at home.

Mr. Sherman. All I wish to know is, whether General Dix, or any other minister, could wear the uniform of our army, if he chose. The rule, if I understand it, in some foreign countries, is, that a person must appear at court in some kind of uniform. If none is provided by his government, or authorized by his government, then he adopts a certain uniform according to the custom of the country to which he is accredited. Perhaps, however, I am not correct.

Mr. Sumner. The object of the pending measure is to encounter that precise requirement of foreign governments, and to put our ministers on an equality with those of other countries. I have already said that ministers of other countries may appear at the courts to which they are addressed as they would appear before their own sovereign. I take it the Turkish ambassador is not obliged to assume in Paris or London any official costume peculiar to France or England; but he appears, as at a reception by his own sovereign, with the fez on his head. And so the Austrian ambassador appears in his fantastic Hungarian jacket. But I see no reason why there should be one rule for these ambassadors, and another for the representatives of the American Republic. Here, as elsewhere, there should be equality. The equality of nations is a first principle of International Law.

But this is offended by any requirement of a foreign government which shall not leave our representative free to appear before the sovereign of the country to which he is accredited as he would before the Chief Magistrate of the American people, — in other words, in the simple dress of an American citizen. This is the whole case.

Mr. Sherman. The Senator does not yet answer my question: Will this prevent an American minister abroad from wearing the uniform of an officer of the army of the United States, such as he would be entitled to wear under our laws, if here?

Mr. Sumner. If entitled under our laws, there could be no difficulty.

Mr. Sherman. We have a law which authorizes a volunteer officer who has attained the rank of a brigadier-general, for instance, always on state occasions to wear that uniform.

Mr. Sumner. There can be no misunderstanding. The ministers are simply to follow Congress; and as Congress has not authorized any uniform or official costume, they can have none, unless they come within the exceptional case to which the Senator has alluded. Certain persons who have been in the military service are authorized, under an existing Act of Congress, to wear their military uniform on public occasions. This resolution cannot interfere in any way with that provision. It leaves the Act of Congress in full force, and is applicable only to those not embraced by that Act.

The joint resolution passed the Senate without a division. March 25th, it passed the House without a division, and was approved by the President, so that it became a law.[1] It was promptly communicated to our ministers abroad by a circular from the Department of State.

[1] Statutes at Large, Vol. XV. p. 23.

VIGILANCE AGAINST THE PRESIDENT.

Remarks in the Senate, on Resolutions adjourning Congress, March 23, 26, 28, and 29, 1867.

March 23d, Mr. Trumbull, of Illinois, offered a resolution adjourning the two Houses on Tuesday, March 26th, at twelve o'clock, noon, until the first Monday of December, at twelve o'clock, noon. Mr. Drake, of Missouri, moved to amend by striking out "the first Monday of December," and inserting "Tuesday, the 15th day of October." This amendment was rejected, — Yeas 19, Nays 28. Mr. Morrill, of Vermont, then moved to amend by inserting "first Monday of November," and this amendment was rejected, — Yeas 18, Nays 27. Mr. Sumner then moved the adjournment of the two Houses on Thursday, the 28th day of March, at twelve o'clock, noon, until the first Monday of June, and that on that day, unless then otherwise ordered by the two Houses, until the first Monday of December. This was rejected, — Yeas 14, Nays 31. The question then recurred on the resolution of Mr. Trumbull. A debate ensued, in which Mr. Sumner said : —

I AM against the resolution. In my opinion, Congress ought not to adjourn and go home without at least some provision for return to our post. As often as I think of this question, I am met by two controlling facts. I speak now of facts which stare us in the face.

You must not forget that the President is a bad man, the author of incalculable woe to his country, and especially to that part which, being most tried by

war, most needed kindly care. Search history, and I am sure you will find no elected ruler who, during the same short time, has done so much mischief to his country. He stands alone in bad eminence. Nobody in ancient or modern times can be his parallel. Alone in the evil he has done, he is also alone in the maudlin and frantic manner he has adopted. Look at his acts, and read his speeches. This is enough.

Such is the fact. And now I ask, Can Congress quietly vote to go home and leave such a man without hindrance? These scenes are historic. His conduct is historic. Permit me to remind you that your course with regard to him will be historic. It can never be forgotten, if you keep your seats and meet the usurper face to face, — as it can never be forgotten, if, leaving your seats, you let him remain master to do as he pleases. Most of all, he covets your absence. Do not indulge him.

Then comes the other controlling fact. There is at this moment a numerous population, counted by millions, — call it, if you please, eight millions, — looking to Congress for protection. Of this large population, all the loyal people stretch out their hands to Congress. They ask you to stay. They know by instinct that so long as you remain in your seats they are not without protection. They have suffered through the President, who, when they needed bread, has given them a stone, and when they needed peace, has given them strife. They have seen him offer encouragement to Rebels, and even set the Rebellion on its legs. Their souls have been wrung as they beheld fellow-citizens brutally sacrificed, whose only crime was that they loved the Union. Sometimes the sacrifice was on a small

scale, and sometimes by wholesale. Witness Memphis; witness New Orleans; ay, Sir, witness the whole broad country from the Potomac to the Rio Grande.

With a Presidential usurper menacing the Republic, and with a large population, counted by millions, looking to Congress for protection, I dare not vote to go home. It is my duty to stay here. I am sure that our presence here will be an encouragement and a comfort to loyal people throughout these troubled States. They will feel that they are not left alone with their deadly enemy. Home is always tempting. It is pleasant to escape from care. But duty is more than home or any escape from care. As often as I think of these temptations, I feel their insignificance by the side of solemn obligations. There is the President: he must be watched and opposed. There is an oppressed people: it must be protected. But this cannot be done without effort on the part of Congress. "Eternal vigilance is the price of liberty." Never was there more need for this vigilance than now.

An admirable and most suggestive engraving has been placed on our tables to-day, in "Harper's Weekly,"[1] where President Johnson is represented as a Roman emperor presiding in the amphitheatre with imperatorial pomp, and surrounded by trusty counsellors, among whom it is easy to distinguish the Secretary of State and the Secretary of the Navy, looking with complacency at the butchery below. The victims are black, and their sacrifice, as gladiators, makes a "Roman holiday." Beneath the picture is written, "Amphitheatrum Johnsonianum — Massacre of the Innocents at New Orleans, July 30, 1866." This inscription tells the terrible

[1] March 30, 1867.

story. The bloody scene is before you. The massacre proceeds under patronage of the President. His Presidential nod is law. At his will blood spurts and men bite the dust. But this is only a single scene in one place. Wherever in the Rebel States there is a truly loyal citizen, loving the Union, there is a victim who may be called to suffer at any moment from the distempered spirit which now rules. I speak according to the evidence. This whole country is an "Amphitheatrum Johnsonianum," where the victims are counted by the thousand. To my mind, there is no duty more urgent than to guard against this despot, and be ready to throw the shield of Congress over loyal citizens whom he delivers to sacrifice.

The resolution of Mr. Trumbull was agreed to, — Yeas 29, Nays 16.

March 25th, on motion of Mr. Wilson, of Massachusetts, the resolution was returned from the House of Representatives for reconsideration. Meanwhile the House adopted the following resolution, which was laid before the Senate: —

"That the Senate and House of Representatives do hereby each give consent to the other that each House of Congress shall adjourn the present session from the hour of twelve o'clock, meridian, on Thursday next, the 28th day of March instant, to assemble again on the first Wednesday of May, the first Wednesday of June, the first Wednesday of September, and the first Wednesday of November, of this year, unless the President of the Senate *pro tempore* and the Speaker of the House of Representatives shall by joint proclamation, to be issued by them ten days before either of the times herein fixed for assembling, declare that there is no occasion for the meeting of Congress at such time."

On motion of Mr. Fessenden, this resolution was referred to the Committee on the Judiciary.

March 26th, the House resolution was reported by Mr. Trumbull, with a substitute adjourning the two Houses "on the 28th instant, at twelve o'clock, meridian." Debate ensued, when Mr. Howe, of Wisconsin, moved an adjournment on the 29th of March until the first Monday of June, and on that day, unless then otherwise ordered by the two Houses, until the first Monday of December. After de-

bate, this amendment was rejected, — Yeas 17, Nays 25. Mr. Morrill, of Vermont, moved to amend the substitute of the Committee by adding "to meet again on the first Monday of November next," which was rejected, — Yeas 16, Nays 25. Mr. Sumner then moved to amend the substitute by adding : —

"*Provided*, That the President of the Senate *pro tempore* and the Speaker of the House of Representatives may by joint proclamation, at any time before the first Monday of December, convene the two Houses of Congress for the transaction of business, if in their opinion the public interests require."

Here he said : —

I AM unwilling to doubt that Congress may authorize their officers to do that. I cannot doubt it. Assuming that we have the power, is not this an occasion to exercise it? I do not wish to be carried into the general debate. I had intended to say something about it; but it is late. . . . . I will not, therefore, go into the general question, except to make one remark: I do think Congress ought to do something; we ought not to adjourn as on ordinary occasions, — for this is not an ordinary occasion, and there is the precise beginning of the difference between myself and the Senator from Maine, and also between myself and the Senator from Illinois.

The Senator from Illinois said, Why not, as on ordinary occasions, now go home? Ay, Sir, that is the very question. Is this an ordinary occasion? To my mind, it clearly is not. It is an extraordinary occasion, big with the fate of this Republic.

The amendment of Mr. Sumner was rejected, — Yeas 15, Nays 26. Mr. Howe then moved to insert "Friday, the 29th," instead of "Thursday, the 28th," which was rejected. Mr. Drake then moved an amendment, 28th March until 5th June, when, unless a quorum of both Houses were present, the presiding officers should adjourn until 4th September, when, unless a quorum of both Houses were present, they should adjourn until the first Monday of December. This also was

rejected, — Yeas 14, Nays 27. The substitute reported by Mr. Trumbull was then agreed to, — Yeas 21, Nays 17. The other House then adopted a substitute, adjourning March 28th to the first Wednesday of June, and to the first Wednesday of September, unless the presiding officers, by joint proclamation ten days before either of these times, should declare that there was no occasion for the meeting of Congress at that time. In the Senate, March 28th, Mr. Edmunds, of Vermont, moved a substitute, adjourning March 30th to the first Wednesday of July, and then, unless otherwise ordered by both Houses, on the next day adjourning without day.

Mr. Sumner said : —

THE Senate seems to have arrived at a point where the difference is one of form rather than substance. We have been occupied almost an hour in discussing the phraseology of the resolution. We have reached the great point which was the subject of such earnest discussion two or three days ago, that Congress ought in some way or other to secure to itself the power of meeting during the long period between now and next December. I understand Senators are all agreed on that. I am glad of it. Only by time and discussion we have reached that harmony. The House has given us three opportunities. The old story is repeated. The Senate, so far as I can understand, is ready to adopt the proposition of the House, — substantially I mean, for this proposition, as I understand it, is simply to secure for Congress an opportunity of coming together during the summer and autumn. Now the practical question is, How shall this be best accomplished? I am ready to accept either of the forms. I am willing to accept the form last adopted by the House. I do not see that that is objectionable. I am ready, if I can get nothing better, to accept the form proposed by the Senator from Vermont; but I must confess that the form proposed by the Senator from Missouri seems briefer, clearer, better. If I could have

my own way, I would set aside the proposition of the Senator from Vermont, and fall back upon that of the Senator from Missouri, as better expressing the conclusion which I am glad to see at last reached.

I believe it is settled that we shall not adjourn to-morrow. Am I right?

Mr. Edmunds. Yes, Sir.

Mr. Sumner. I am glad of it. That is the gain of a day. We were to adjourn to-day at twelve o'clock, and then again to-morrow at twelve o'clock, and now it is put off until Saturday. I cannot doubt that the Senate would do much better, if it put off the adjournment until next week. There is important business on your table, which ought to be considered.

Mr. Sumner then called attention to measures deserving consideration, and continued:—

Here is another measure, which I once characterized as an effort to cut the Gordian knot of the suffrage question. It is a bill introduced by myself to carry out various constitutional provisions securing political rights in all our States, precisely as we have already secured civil rights. The importance of this bill cannot be exaggerated. There is not a Senator who does not know the anxious condition of things in the neighboring State of Maryland for want of such a bill. Let Congress interfere under the National Constitution, and exercise a power clearly belonging to it, settling this whole suffrage question, so that it shall no longer agitate the politics of the States, no longer be the occasion of dissension, possibly of bloodshed, in Maryland or in Delaware, or of difference in Ohio. Let us settle the question before we return home.

When I rose, I had no purpose of calling attention to these measures. My special object was to express satisfaction that the Senate at last is disposed to harmonize with the other House on the important question of securing to Congress the power of meeting during the summer and autumn. That is a great point gained for the peace and welfare of the country. Without it you will leave the country a prey to the President; you will leave our Union friends throughout the South a sacrifice to the same malignant usurper.

The substitute proposed by Mr. Edmunds was agreed to, — Yeas 25, Nays 14. The House non-concurring, it was referred to a committee of conference.

March 29th, another resolution having been meanwhile adopted by the House, providing for an adjournment to the first Wednesday of June, and then, if a quorum of both Houses were not present, to the first Wednesday of September, and then, in the absence of a quorum, to the first Monday of December, Mr. Edmunds moved the following substitute : —

"The President of the Senate and the Speaker of the House of Representatives are hereby directed to adjourn their respective Houses on Saturday, March 30, 1867, at twelve o'clock, meridian, to the first Wednesday of July, 1867, at noon, when the roll of each House shall be immediately called, and immediately thereafter the presiding officer of each House shall cause the presiding officer of the other House to be informed whether or not a quorum of its body has appeared; and thereupon, if a quorum of the two Houses respectively shall not have appeared upon such call of the rolls, the President of the Senate and the Speaker of the House of Representatives shall immediately adjourn their respective Houses without day."

Mr. Sumner said : —

I AM against the amendment on two grounds : first, that it proposes to adjourn too soon ; and, secondly, that it superfluously and unnecessarily makes a new difference with the House of Representatives. In the first place, it proposes to adjourn too soon, — that is, to-mor-

row at twelve o'clock. The business of the country will suffer by adjournment at that time. We are now in currents of business that recall the last days of regular sessions, or the rapids that precede a cataract. Senators are struggling for the floor, and perhaps are not always amiable, if they do not obtain it. We ought to give time for all this important business, so that there be no such unseemly struggle.

The calendar of the Senate shows one hundred and fifteen bills now on your table from the Senate alone, of which only a small portion have been considered; and looking at the House calendar, I find one of their late bills numbered one hundred and two, showing that very large number, of which you have considered thus far only a very small proportion. I do not ask attention to these numerous bills, but unquestionably among them are many of great importance. There are two especially to which I have already referred, and to which I mean to call your attention, so long as you sit as a Congress, and down to the last moment, unless they shall be acted on. I mean, in the first place, the bill providing for a change in the time of electing a mayor and other officers in the city of Washington. Congress ought not to go home leaving this question unsettled.

You have bestowed the suffrage upon the colored people here, and they are about to exercise it in choosing aldermen and a common council; but those aldermen and common councilmen will find themselves presided over by a mayor chosen by a different constituency, and hostile to them in sentiment, one possessing sometimes the veto power, and always a very considerable influence, which he will naturally exercise against this new government. Will you leave Washington subject to

such discord? Will you consent that the votes of the colored people shall be thus neutralized the first time they are called into exercise? I trust Congress will not adjourn until this important bill is acted upon. It is very simple; it need not excite discussion; it is practical. Let it be read at the table, and every Senator will understand it, and will be ready to vote upon it without argument. Thus far I have not been able to bring it before the Senate, though I have tried day by day. I have not yet been able to have it read.

Mr. Sumner then referred again to the bill securing the elective franchise throughout the country, vindicating its constitutionality and necessity.

Mr. Wilson then moved to amend by making the day of adjournment the 10th of April; but this was rejected, — Yeas 13, Nays 28. Mr. Sumner then moved to amend by inserting "five o'clock, Saturday afternoon," instead of "twelve o'clock, noon," saying, "so that we shall have five hours more for work"; but this, modified by the substitution of four o'clock, was likewise rejected.

The substitute of Mr. Edmunds was then adopted, — Yeas 28, Nays 12, — Mr. Sumner voting in the negative. The House concurred, and the adjournment took place accordingly.

In this episode began the differences with regard to President Johnson. To protect good people against him was the object of the earnest effort to prolong the session and to provide for an intermediate session before the regular meeting of Congress. Among those who voted for the adjournment were distinguished Senators who afterwards voted for his acquittal, when impeached at the bar of the Senate.

LOYALTY AND REPUBLICAN GOVERNMENT CONDITIONS OF ASSISTANCE TO THE REBEL STATES.

Remarks in the Senate, on a Joint Resolution authorizing Surveys for the Reconstruction of the Levees of the Mississippi, March 29, 1867.

March 29th, on motion of Mr. Sprague, of Rhode Island, the Senate proceeded to consider a joint resolution directing an examination and estimate to be made of the cost of reconstructing the levees of the Mississippi. Mr. Sumner remarked that he was not against making this exploration and inquiry, — that he welcomed anything of the kind, — but he was anxious that Congress should not commit itself to the expenditure involved. He therefore moved the following amendment: —

"*Provided*, That it is understood in advance that no appropriations for the levees of the Mississippi River shall be made in any State until after the restoration of such State to the Union, with the elective franchise and free schools without distinction of race or color."

On this he remarked: —

I AM unwilling that Congress should seem in any way to commit itself to so great an expenditure in one of these States, except with the distinct understanding that it shall not be until after the restoration of the State to the Union on those principles without which the State will not be loyal or republican. We are all seeking to found governments truly loyal and truly republican. Will any Rebel State be such until it has secured in its constitution the elective franchise to all, and until it has opened free schools to all? The

proposition is a truism. A State which does not give the elective franchise to all, without distinction of color, is not republican in form, and cannot be sanctioned as such by the Congress of the United States. Now I am anxious, so far as I can, to take a bond in advance, and to hold out every temptation, every lure, every seduction to tread the right path, — in other words, to tread the path of loyalty and of republicanism. Therefore I seize the present opportunity to let these States know in advance, that, if they expect the powerful intervention of Congress, they must qualify themselves to receive it by giving evidence that they are truly loyal and truly republican.

This is no common survey of a river or harbor. The Senator from Maine [Mr. MORRILL] has already pointed out the difference between the two cases. They are wide apart. It is an immense charity, a benefaction, from which private individuals are to gain largely. Thus far these levees have always been built, as I understand, — I am open to correction, — by the owners of the lands, and by the States.

MR. STEWART [of Nevada]. And principally by the swamp lands donated by Congress.

MR. SUMNER. Now it is proposed, for the first time, that the National Government shall intervene with its powerful aid. Are you ready to embark in that great undertaking? I do not say that you should not, for I am one who has never hesitated, and I do not mean hereafter to hesitate, in an appropriation for the good of any part of the country, if I can see that it is constitutional; and on the question of constitutionality I do not mean to be nice. I mean always to be generous

in interpretation of the Constitution, and in appropriations for any such object; but I submit that Congress shall not in any respect pledge itself to this undertaking, involving such a lavish expenditure, except on the fundamental condition that the States where the money is to be invested shall be truly loyal and republican in form; and I insist that not one of those States can be such, except on the conditions stated in my amendment.

No vote was reached, and the joint resolution was never considered again.

W 83

WERT
BOOKBINDING
Grantsville, Pa
MAY - JUNE 1959
We're Quality Bound